TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. ~~916.~~ 575

ELNOR MERIWETHER, RECEIVER, &c., OF THE CITY OF MEMPHIS, ET AL., APPELLANTS,

vs.

ROBERT GARRETT & SONS ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED OCTOBER 11, 1879.

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SUPREME COURT OF THE UNITED STATES.

No. 916.

MINOR MERIWETHER, RECEIVER, &c., OF THE CITY OF MEMPHIS, ET AL., APPELLANTS,

vs.

ROBERT GARRETT & SONS ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

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a ROBERT GARRETT & SONS & OTHERS
vs.
THE CITY OF MEMPHIS.

Proceedings of the circuit court of the United States for the western district of Tennessee, November term, 1878.

b THE UNITED STATES OF AMERICA:

Sixth circuit and district of West Tennessee.

I, Bell W. Etheridge, clerk of the circuit court of the United States for said western district of Tennessee, do hereby certify that the paper hereto attached is a full, true, perfect, and correct copy of the original papers of record, with the exception of three cost bonds and appeal bond, of all the documents, which the clerk is unable to find, on account of the absence of attorneys, by the present yellow fever panic, in said court, as the same now appear of record and upon the files in my office, in the following cause, to wit, Robert Garrett & Sons et als. vs. The City of Memphis.

In testimony whereof I have hereunto set my name and affixed the seal of said court, at office in the city of Memphis, this 2nd day of August, A. D. 1879, and of the Independence of the United States the 104th year.

[SEAL.] BELL W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

1 In the circuit court of United States for western district of Tennessee. No. 322. Equity side.

ROBERT GARRETT & SONS, A FIRM COMPOSED of John W. Garrett, Robert Garrett, and Thomas Garrett, residents and citizens of the State of Maryland, and W. T. Walters, a resident and citizen of the State of Maryland, and John Stewart, a resident and citizen of the State of Virginia, and Thomas Swann, a resident and citizen of the State of Maryland, and Pinckney C. Bethell, a citizen of the State of Louisiana, and Richard Lathers, who is a resident and citizen of the State of New Jersey, and Statham & Taylor, a firm composed of C. W. Statham and John O. Taylor, residents and citizens of Lynchburg, Virginia, and F. W. Bennett, a resident and citizen of the State of Maryland, and Andrew Reid, who is a resident and citizen of the State of Maryland, and J. B. H. Smith, who is a resident and citizen of the State of Maryland, and P. S. March, who is a resident and citizen of the State of New York, and T. L. Fossich, a resident and citizen of the State of Alabama, and Francis A. Cook, who is a resident and citizen of State of Maryland, and the Baltimore Equitable Society, a corporation char-

2

tered under the laws of the State of Maryland, and George G. Williams, a resident and citizen of the State of New York, and W. W. Spence, a resident and citizen of the State of
3 Maryland, and Thomas Branch & Co., who are residents and citizens of the State of Virginia, and The Chemical National Bank, a corporation organized under the act of Congress of the United States, which has its domicile and citizenship in the State of New York, and P. Zell & Sons, a firm composed of P. Zell and Zell, residents and citizens of the State of Maryland, complainants.

against

THE CITY OF MEMPHIS, A MUNICIPAL CORPORATION created and chartered by the laws of the State of Tennessee, defendant.

To the honorable judges of circuit court western district Tenn.:

Humbly complaining, these complainants respectively and jointly show unto your honor that they are the owners and holders of past
4 due and unpaid bonds and coupons and other indebtedness of said defendant municipal corporation to the amount of more than one hundred thousand dollars; that upon much of said indebtedness they have judgments and mandamuses to compel the collection thereof against said municipal corporation.

Complainants further state and charge that, owing to malfeasance and misfeasance in office and the incompetency of the officials of said defendant corporation, running through a period of many years, said city is largely in debt, and is said in common parlance to be insolvent. They state that each year for the last ten or twelve years large assessments of taxes for municipal and other purposes have been made by said city; and for each of said years the officials and tax collectors of said city have collected the said taxes so assessed from only about one-half to three-fifths of the taxable property and persons within
5 the corporate limits of the same, and have left the remainder, or about two fifths of each annual levy, uncollected; that each next succeeding year the said corporation would not only levy the amount of taxes deemed sufficient for the actual expenses and demands of the current year proper, but assess and levy on all taxable property in said city and amount sufficient to make up the deficit occasioned by non-collection on the levy for the preceding year.

And again the same action was repeated as in the year just preceding, to wit, of this last levy the city thought its officials would collect about three-fifths of the entire levy for the year, leaving about two-fifths uncollected, and thus it is that this has been repeated from year to year for a series of years, and thus about three-fifths or less of the citizens and taxable property in said corporation have for the last ten
6 years been made to bear the entire burden of carrying on the machinery of the government of said city, and also the payment of what has been paid on the debt of the same, whilst, owing to the inefficiency of the city officials during this time, about two-fifths of the taxable persons and property of said city have had a comparative exemption from all public burdens, and so it is at this time, there is of taxes of said defendant corporation that have been assessed and levied during the last ten or twelve years the sum of at least two million five

hundred thousand dollars now due uncollected and unpaid, and whilst creditors have been pressing for their money and the prompt tax-payers have been over burdened by taxation on account of the delinquent non-tax-payers, by reason of the whole burden falling on a few instead of equally upon all; yet the officials of said def't corporation
7 have not collected these past due taxes, nor has defendant made any earnest or determined effort to do so; but said defendant, through its officers, has constantly connived at the delinquent taxes, and from favor or otherwise failed to press the collection of the same until there is now of taxes past due and unpaid almost sufficient, at the present price of city indebtedness, to pay up and pay off the entire debt, yet said defendant refused to collect and press the collection of said past due taxes against the delinquents, notwithstanding the present revenue tax laws and statutes of the State of Tennessee, as well as the general law, afford an ample remedy for collection of all taxes.

Complainants charge that this persistent failure by def't to collect these past due taxes during those years is a great wrong and fraud, not only upon the prompt tax-payer but also upon the creditors of said corporation.

8 Complainants further state and show that, during the years 1875, 1876, 1877 and 1878, large levy of taxes have been made each year by said city in obedience to writs of mandamus from various courts in this county for the payment of judgments on bonds and coupons of said city; that each year said city fails to collect a large proportion, to wit, about two fifths of the annual levy for these special purposes, as well as for the general purposes, and hence a large proportion of said judgment in mandamus is uncollected by reason thereof. That complainants have large amounts in said judgments in which mandamus has been awarded unpaid; that they, as well as other creditors, have a large interest in these special levies alone amounting to many thousand dollars. They charge that said tax is levied for the
9 sole purpose of paying these several judgments constitute a trust fund that can be only used for that particular purpose, and that the def't corporation stands in the attitude of and is a trustee for the same, and that said def't has been requested by comp'ts to press the collection, which it neglects to do. They charge that such neglect constitutes a fraud upon the rights of complain'ts, against which a court of equity will relieve.

Complainants are advised they have no adequate remedy at law, and unless this honorable court appoints a receiver to take charge of the assets of said city and collection of the taxes already levied for the specific purpose, paying comp'ts several judgments, with proper authority and power to collect the same as speedily as possible, they are without remedy. But, outside of the power of the chancery court to appoint a receiver in such cases, comp'ts show that by an act entitled "An
10 act to enable municipal corporations having more than thirty thousand inhabitants to settle their indebtedness," passed by the legislature of Tennessee March 19th, 1877, it is provided that, upon the application of any person or persons who are the holders and owners of any past due and unpaid bonds, coupons or other indebtedness of said municipal corporation, not less in amount than one hundred thousand dollars, it shall be the duty of the chancery court to appoint a receiver for said municipal corporation, &c.

Complainants further charge that a large amount of judgments and tax mandamuses are now outstanding and pressing said city. They further charge that the amount of the sum of the tax mandamuses now

outstanding against the def't, the city of Memphis, amounts, at this time, in the aggregate, to over eight hundred and fifty thousand
11 dollars, and that said defendant corporation has over thirty-four thousand inhabitants, and is one of the municipal corporations intended and covered by said act.

The premises considered, complainants pray that the said city of Memphis be made a party defendant to this bill; that due process and copy issue, and it be required to answer the allegations herein. That a discreet and prudent business man be appointed receiver herein, to take charge of the assets of said city of Memphis, including its tax-books and bills for all past due and imposed taxes, and that, by order of this court, he be clothed with all proper powers to enable him to collect all outstanding indebtedness and claims of every kind due said defendant, and with all powers contained in said act of the legislature of Tennessee, passed March 19th, 1877, and that he be clothed with all
12 other necessary powers to enable him to collect in the assets and settle the debts of said def't, and particularly that of complainants, and that further directions, from time to time, be given him by order of this court. They pray for all such other further and general relief as they may be entitled to in the premises, and will ever pray.

MYERS & SNEED,
Att'ys.

13 Personally appeared before me W. M. Sneed, who, being duly sworn deposes, and says that the facts contained in the foregoing bill are true to the best of his information, knowledge and belief.

W. M. SNEED.

Subscribed and sworn to before me, this 28th day of Jan'y, 1879.

H. E. ANDREWS,
Clerk U. S. Dist. Ct.

(Endorsed as follows:) No. 3222. Robert Garrett & Sons et als. vs. The City of Memphis. Bill filed Jan'y 28th, 1879. Bell W. Etheridge, clerk.

14 Know all men by these presents, that we, Robert Garrett & Sons, and Myers & Sneed, are held and firmly bound unto said defendant the city of Memphis, in the sum of two hundred and fifty dollars; but to be void on condition that the said defendants, the city of Memphis, do pay and satisfy all costs that may accrue in that behalf in the prosecution of the said suit this day commenced by the said plaintiff in the circuit court of the United States for the western district of Tennessee, as said against the said defendant; and also on failure of the said plaintiff to prosecute the said suit with effect; and also on failure of the defendant, if convicted, to pay said costs.

Witness our hands and seals this 28 day of Jan'y, A. D. 1879.

ROBERT GARRETT & SONS ET ALS., [SEAL.]
By MYERS & SNEED. [SEAL.]
MYERS & SNEED, [SEAL.]
By SNEED.

Approved and acknowledged before me the 28 day of Jan'y, A. D. 1879.

BELL W. ETHERIDGE, *Clerk.*
D. C.

15 (Endorsed as follows:) No. 3222. Robert Garrett & Sons et als. vs. The City of Memphis. Cost bond. Myers & Sneed, attorneys. Filed 28 day of June, A. D. 1879. Bell W. Etheridge, clerk.

The President of the United States of America to the marshal of the western district of Tennessee, greeting:

You are hereby commanded to summon The City of Memphis, a municipal corporation created and chartered by and a citizen of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States, in the sixth circuit for the western district of Tennessee, at Memphis, in said district, on the first Monday in March next, and then and there to plead, answer or demur to the bill filed in the office of the clerk of the said court on the 28 day of Jan'y, 1879, against said defendant, by Robert Garrett & Sons et als.

Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at said Memphis, this 28th day of Jan'y, A. D. 1879, and the 103 of American Independence.

SEAL OF THE CIRCUIT COURT W. D. T.

BELL W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

MEMORANDUM.—The defendant, the City of Memphis, is required to enter his appearance in this suit in the office of the clerk of the circuit court at Memphis, on or before the day on which the subpœna is re-
17 turnable, or the allegations of the bill will be taken for confessed against said defendant, and judgment rendered accordingly.

B. W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

(Endorsed as follows:) No. 322. Circuit court of the United States, western district of Tennessee. Robert Garrett & Sons et al. vs. The City of Memphis. Summons. Issued 29th day of Jan'y, 1879. Bell W. Etheridge, clerk. Returnable to March rule day, A. D. 1879. Returned and filed 31 day of Jan'y, A. D. 1879. Bell W. Etheridge, clerk.

Received by marshal @ 6.05 p. m., on 29th January, 1879.

At Memphis, Tenn., and on the twenty-ninth January, 1879, at 8 p. m., I served certified copy of this summons, together with certified copy of bill in this case, personally on John R. Flippin, as mayor of the city of Memphis.

M. T. WILLIAMSON,
U. S. Marshal,
18 By SAM. C. PAINE, *Dep.*,
By G.

And at Memphis, Tenn., on 30th January, 1879, I served certified copy of this summons personally on C. W. Heiskell, as city attorney of the city of Memphis.

M. T. WILLIAMSON,
U. S. Marshal,
By A. G. GARDNER, *Dep.*

3 serv., 6.00; 2 miles, .12—$6.12.

19 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof, begun and held for its Nov'r term, A. D. 1878, at the United States court-house in the city of Memphis, in said district, on, to wit, the 4th day of Feb'ry, A. D. 1879, in the following cause, to wit:

ROB'T GARRETT & SONS ET AL., PLAINTIFF,
vs.
THE CITY OF MEMPHIS ET AL., DEFENDANT. } No. 322. Equity.

Upon motion in this cause leave is granted complainants to file an amended and supplemental bill herein.

Judge Hammond did not sit in this case.

20 In the circuit court of the United States, sixth judicial circuit district of West Tennessee. In equity. No. 322.

ROBERT GARRETT & SONS, A FIRM COMposed of Robert Garrett, Jno. W. Garrett, and Thomas Garrett, who are residents and citizens of the State of Maryland, and W. T. Walters, a resident and citizen of the State of Maryland, and John Stewart, a resident and citizen of the State of Maryland, and Thos. Swann, a resident and citizen of the State of Maryland, and Pinckney C. Bethell, a citizen of the State of Louisiana, and resident alternately in the States of Tennessee and Louisiana, and Richard Gathers, a resident and citizen of the State of New Jersey, and Statham & Taylor, a firm composed of Charles W. Statham & Jno. O. Taylor, residents and citizens of the State of Virginia, and F. W. Bennett, a resident and citizen of the State of Maryland, and Andrew Reid, a resident and citizen of the State of Maryland, and J. B. H. Smith, a resident and citizen of the State of Maryland, and P. S. Marsh, a resident and citizen of the State of New York, and T. L. Fossick, a resident and citizen of the State of Alabama, and Francis A. Crook, a resident and citizen of the State of Maryland, and the Baltimore Equitable Society, a corporation chartered under the laws of the State of Maryland and having its home in said State, and George G. Williams, a resident and citizen of the State of New York, and W. W. Spence, a resident and citizen of the State of Maryland, and Thos. Branch & Co., residents and citizen' of State of Virginia, and The Chemical National Bank of New York, a cor-

poration organized under an act of Congress of the United States, which has its
21 residence and domicil, in the city and State of New York, and P. Zell & Sons, a firm composed of , who are citizens reside in the State of Maryland,

against

THE CITY OF MEMPHIS, A MUNICIPAL CORPORATION created by the laws of the State of Tennessee, and a resident and citizen of Shelby County, in the State of Tennessee, John R. Flippin, mayor of said city, and W. J. Chase, W. Hewitt, James Elder, Simon Green, H. G. Dent, Marcus Jones, W. H. Brown, J. W. Moores, W. Benjes, George Haesinger, composing the Board of Aldermen of Memphis, James Bohan, D. T. Goodyear, W. P. Proudfit, Chas. Quentel, sr., J. H. Surdam, J. H. White, W. H. Bates, M. Selig, L. L. Lawhorn, P. O. Wood, Andrew Renkert, Herman Caro, Thos. Boyle, Peter Tracey, W. J. Crosbie, W. O. Harvey, Thos. Barrett, P. M. Patterson, L. D. Grant, William Bradford, composing the Board of Common Councilmen of Memphis, altogether constituting the General Council of said city, and as trustees and representatives of the corporators of Memphis, all citizens and residents of Shelby County, Tennessee; also George B. Fleece, trustee of Shelby County, Tennessee, and ex-officio tax-collector of the city of Memphis, the German National Bank of Memphis, a corporation created under an act of Congress of the United States, J. W. Moores, former tax-collector of the city of Memphis, and Joseph Uhl, clerk of the circuit court of Shelby County, all residents and citizens of Shelby County, Tennessee.

Amended and supplemental bill.—Filed on behalf of complainants herein and all other persons who may come in and be made parties.

To the honorable the judges of the circuit court of the United
22 States in and for the sixth judicial circuit for the district of West Tennessee, at Memphis:

Humbly complaining, your orators would respectfully show unto your honor, that, on the 28th day of January, 1879, they exhibited and filed their original bill in this honorable court against the defendant, the City of Memphis, in which they show and allege—

1st. That they are collectively the holders and owners of due and unpaid bond and coupons and other indebtedness of said defendant municipal corporation of Memphis to the amount of more than one hundred thousand dollars.

2nd. That upon much of said indebtedness, they severally have judg-

ments, and a mandamus to compel the collection of the same against the city of Memph'.

3rd. That, owing to the malfeasance and misfeasance in office, and the incompetency of the officials of said defendant corporation for many years, said city or municipal corporation is largely in debt, and said to be insolvent.

4th. That for the last ten or twelve years, large assessments and levies of taxes have been made by said city upon all the taxable property of the same, and that for each year the officers and tax collectors have only collected from one-half to three-fifths of said taxes so levied each year, an' have left the remainder, about two-fifths, of each annual levy uncollected. That for each succeeding year the said corpora ion would not only levy the amount of taxes deemed sufficient for the then current year, but also assess and levy on all taxable property in said city an amount sufficient to make up the deficit occasioned by non collection for each preceeding year, and so on during said whole period, &c.

23 5th. That now there is due said city of . taxes which have been regularly assessed and levied on, two millions five hundred thousand dollars, now due and collectable, and unpaid, &c.

That defendant, through its officers, have not made any earnest, determined effort to collect said taxes, but have connived at the delinquency from favor or otherwise, failed to press the collection of the same, and, that they, the officers of said city, refused to collect and press for collection said taxes past due, notwithstanding the law affords ample power to do so; that said failure and refusal is a fraud on the creditors and prompt tax payers, and a great wrong; that during the years 1875, 1876, 1877, & 1878, large levies of taxes have been made each year by said city in obedience to writs of mandamus from the various courts in this county, for the payment of judgments, bonds, and coupons of said city, which the said defendant has failed to collect, and that each complainant has large amounts of judgments upon which mandamuses has issued, now uncollected and unpaid by reason of non-collection;

24 that they as well as other creditors have a large interest in these special mandamus levies uncollected, amounting to many thousands of dollars; that said mandamus levies for the years aforesaid are for the sole purpose of paying these several judgments, constitute a trust fund that can only be used for that purpose, and that said defendant corporation stands in the attitude of a trustee for the collection of said fund for the purposes for which it was levied; that defendant has neglected and refused to collect said mandamus tax as they ought to when due, and hence have broken faith, and their action constitutes a breach of trust against which a court of equity will relieve, &c.; that aside from the general power of a court of equity to appoint a receiver that by

25 the provissions of an act of the legislature of the State of Tennessee entitled "An act to enable municipal corporations having more than thirty thousand inhabitants to settle their indebtedness," passed by legislature of the State of Tennessee March 19th, 1877, it is provided that upon the application of any person or persons who are the holder and owners of any past due and unpaid bonds, coupons, or other indebt'ness of said municipal corporation not less in amount than one hundred thousand dollars, it shall be the duty of the chancery court to appoint a receiver for said municipal corporation, &c.; that the sum of tax mandamuses now outstanding against the defendant, the City of Memphis, amounts at this time in the aggregate to over eight hun-

26 dred & fifty thousand dollars, and that said defendant corporation of Memphis has over thirty-five thousand inhabitants, and is one of

the municipal corporations intended and covered by said act. In said original bills complainants pray for a receiver to be appointed by this honorable court to take charge of all of these assets and property of said city and carry on its business under the provissions of said act, and settle its indebtedness, and particularly to take charge and collect all back taxes due and owing to the city, and to pay them over under the order of this court, and that said receiver be clothed with all proper power to enable him to collect in the assets, govern the city, and for general relief; all of which will more fully appear by reference to original bill,
27 which is refer'ed to. Subpœna, &c., issued on said bills, and has been duly served on defendant, but no answer as yet has been filed thereto. Now, in addition to the alligations and matters stated in said original bill, and in amendment of an supplement thereto, complainants allege and show as follows: Complainants state and show that by an act of the legislature of the State of Tennessee passed December 9th, 1826, the town of Memphis was incorporated in Shelby County, Tennessee, with certain powers in said act contained; by an act passed December 1st, 1829, additional powers were given to Memphis, as shown therein. By an act of the legislature of the State of Tennessee, passed October the 19th, 1832, the charter of Memphis was again amended and its powers again increased.

28 Again, by an act of said legislature, passed Feb'ry 3rd, 1843, entitled "An act to amend an act entitled to incorporate the inhabitants of the town of Memphis," said charter was again further amended. By an act of said legislature passed Jan'y 6th, 1845, the town of South Memphis was incorporated. Again the charter of Memphis was further amended by an act of said legislature passed Jan'y 24th, 1846.

Again, by an act of said legislature, entitled "An act to reduce the several acts incorporating the town of Memphis into one act, and to amend the same," passed Jan'y 21st, 1848, the powers of the mayor and alderman of Memphis was again extended in various particulars, as shown by said act. Again, by an act of said legislature passed Feb'ry 4th, 1848, the charter of South Memphis was further amended.

29 Again, by an act of the legislature of the State of Tennessee, passed December 3rd, 1849, the several acts incorporating the city of Memphis and the town of South Memphis were incorporated into one act, said city of Memphis and town of South Memphis consolidated, and the boundary thereof extended, under the name and style of the mayor and alderman of the city of Memphis, by which its powers were enlarged, and by the 10th section of said act it was empowered to issue time bonds for railroad and other purposes not having more than thirty years to run, all of which will more fully appear from said act, which is hereby refer'ed to for more particularity, the same as coppied herein.

Again, by an act of said legislature passed Jan'y 28th, 1852, the
30 charter of said city is again amended and additional taxing powers given to the same.

Again, by an act to establish Jefferson School and for other purposes, the charter of said city was further amended in which power was given said city to levy additional tax to raise money to purchase grounds and erect buildings and establish a system of free education in said city. Again, said charter of Memphis was amended by an act of legislature of said State, passed Feb'y 13th, 1854; by the second section of said act, the inhabitants of said city were constituted a corporation and body politic by the name of the mayor and alderman of the city of Memphis, and by that name to have perpetual succession, &c., with numerous

powers therein granted, said former acts empowering said city
31 to issue time bonds having not less than thirty years to run, and bearing 6 per cent. interest, for the purpose of funding all of the then due debt of the city or that are not yet due, for which bonds of the city have been given; also empowering it to issue bonds on like terms to the Memphis and Little Rock Railroad Company, in which the city has taken stock; said act gives power also to said city to levy tax sufficient to pay interest on said bonds and provides for a sinking fund. Said statutes further provides, that all time bonds theretofore issued by the mayor and alderman of the city of Memphis for the purpose of borrowing money are declared legal and binding, any provision of any law or ordinance to the contrary notwithstanding.

Again, Feb'y 29th, 1856, the legislature of said State under the
32 title of an act to amend the charter of the United Firemen's Insurance Company of Nashville, & *and* for other purposes, again amended the charter of Memphis, the 10th section of which provides that the board of mayor and alderman of the city of Memphis shall set aside semi-annually in the months of July & Jan'y of each year a sum of not less than five thousand dollars to be called the "Memphis Sinking Fund," which shall be exclusively applied to relieving the bonds of the city of Memphis, &c. The 22nd section provides for the issuance of school bonds having not more than 30 years to run. Again, Feb'y 29th, 1856, the charter of said city was further amended. Again, by an act of Feb'y 30th, 1860, the charter of said city was further amended
33 and by the 32nd section of said act, power was given to the city of Memphis to issue time bonds of said city not to have more than thirty years to run, payable in any city of the United States, &c. having interest coupons attached for the following purposes:

1st. To amount not exceeding $500,000 for purpose of erecting permanent water-works in said city.

2nd. An amount not exceeding $500,000 for the construction and pavement of the principal streets and wharves in said city.

3rd. An amount not exceeding $400,000 to be used in the construction of railroad connections between Memphis and St. Louis.

4th. An amount not exceeding $250,000 to aid in the completion of the Mississippi and Tennessee Railroad.

5th. An amount not exceeding $250,000 to aid in the comple-
34 tion of the Memphis and Ohio Railroad, and the same amount for the Mississippi and Tennessee Railroad.

6th. An amount not exceeding $250,000 for the purpose of funding the (then) present due debt of the city due or to become due, and said act further provides for and confers power on said city to levy a tax to pay the interest on said bonds and a sinking fund sufficient to release the same when due, which interest and sinking-fund tax shall each be applied to the special purpose for which levied, &c.

Again by an act passed Feb'y 29th, 1860, the charter of said city was further amended and power given to subscribe stock in the Memphis and Charleston Railroad.

Again said charter was further amended by an act of said legislature, passed March 24th, 1860; again by an act of the legislature of
35 said State, passed Nov. 24th, 1866, the charter of said city was amended, acts 1866, '7, sub-section 2, by which power was expressly given to the city of Memphis to issue time-bonds for making any public improvements that may be necessary for the city. No limit as to the amount of bonds to be issued under this act.

Again by an act of the legislature of said State, approved Dec. 3rd,

1867, private acts 1867 & '8, p. 66, the charter of said city was further amended, and by section 4 of said act power was again given to city of Memphis to issue funding bonds for the purpose of funding the debt of said city then due and to become due, with coupons attached, and no restrictions placed as to the amount to be issued under said act.

36 Again by an act of the legislature of said State, passed M'ch 14th, 1868, acts 1867 & 1868, page 248, section five, the charter of Memphis was again amended, and by section 5 it is provided that the board of council (of Memphis) shall, at the beginning of each corporate year, levy a special tax to pay the interest on the bonds of the city of whatever description, to be collected in money and held for the sole purpose of paying the interest.

Again by an act of legislature of said State of Tennessee, passed Dec. 1st, 1869, entitled an act to reduce the charter of the city of Memphis and the several acts amendatory thereof into one act, and to revise the same acts 1869 & '70, page 225, said charter was in some respects amended, and most, if not all, of the former acts re-enacted of and by 52 sec. of said act is as follows:

37 "Be it further enacted that the general council shall have power in addition to levy and collect special tax for the sole and special purpose of paying the interest as the same may become due on the bonds issued or to be issued by the city. The said tax shall not be greater than necessary for the purpose; a separate account thereof shall be kept and the money received under it shall not be applied to any other purpose whatever."

This was a re-enactment of the former statutes on this subject. The 54 sec. of said act is as follows: Be it further enacted that the general council shall have power to lay and collect a special tax not to exceed one-half per centum or fifty cents on every one hundred dollars' worth of taxable property for the sole purpose of creating a sinking fund

38 to be used in retiring the bonds of the city as the same may become due." By section 61 of said act said city is empowered to issue coupon bonds having not more than thirty years to run, interest at 6% payable semi-annually, for the purpose, of making public improvements that may be deemed necessary for the city or for acquiring any property for public use or to fund debts due or to become due the city. This last clause was a re-enactment of former laws and powers, and by the 57 section it is enacted that all taxes assessed on real estate within the city shall be a lien on such real estate superior to all other claims whatever from the time they are assessed, and this lien for all taxes on real estate.

Again, by an act of said legislature, passed M'ch 2nd, 1870, the charter of said city was amended, acts 1869 & '70, page 631. By chapter

39 143 of acts of the legislature of said State of Tennessee, of 1873, under the head of an act entitled "An act to authorize the mayor and city council or mayor and aldermen of any incorporated city or town in the State of Tennessee having a population of 20,000 and upwards, to issue the bonds of said city or town to the amount of three hundred thousand dollars, for the purpose of funding bona fida debts, &c., at par value."

Again, by an act passed M'ch 25th, 1873, an act was passed by said legislature to provide for the sale of land sold for taxes by bill in chancery court to foreclose liens for taxes due municipal corporations throughout the State.

Again, charters of all municipal corporations of not less than 20,000, were amended by ch. 59, acts 1875, of the legislature of Tennessee,

and said charters were again amended by chapter 142 of the said act of 1875, entitled "An act to provide for corporation."

Again, by act 1877, certain amendments were made not material to notice; all of which acts and amendments to the charter of the city of Memphis, so far as applicable, are hereby referred to and asked to be taken and considered as part of this amended bill, so far as applicable, the same as if copied herein. Complainants further show that under and by virtue of the said several acts of the legislature refer'ed to, and charter of the city of Memphis, and the amendments thereof, the said city of Memphis has from time to time issued, large amount of coupon bonds payable at different periods from date and for different amounts, and for different purposes named in said several acts, to wit:

1st. For funding the passed due debt of the said city at different times as well as the debt not then due.

2nd. For improvements and pavements of the streets of Memphis and its alleys & wharves.

3rd. For school purposes.

4th. To aid in the construction of and to the different railroads centering in Memphis as provided in said acts of the legislature, said bonds when issued had the most of them 30 years to run, some five and some ten in accordance with the object for which they were issued, all having coupons attached for the semi-annual interest of the same; the aggregate amount of said bonds sold, issued, and negotiated amounted to nearly $4,000,000 of various denominations; and complainants were and are holders severally of a large amount of those bonds. They show that under and in presence of said acts of the legislature and the power vested in it thereby the said city of Memphis for various other corporate purposes from time to time has contracted and bound itself for a large amount of debts, amounting to a large amount of money besides the bonds issued as aforesaid, which is due to various parties too numerous to mention. That under and by virtue of an act entitled an act to authorize municipal corporation to settle their indebtedness by the legislature of Tennessee, approved March 8th, 1877, being chapter ten of the acts of legislature of Tennessee for 1877, permitting certain corporations to fund their indebtedness and bonds due and not due, and judgments obtained against them, at from fifty to fifty-five cents on the dollar, according to the class of indebtedness under the provissions and limitations in said act, under and by virtue of the provisions of same act. Many of the creditors of the city of Memphis, including nearly all the complainants, funded their bonds and indebtedness at fifty cents on the dollar, and took the new bonds of the city issued under the provissions of said act, which is hereby referred to the same as if copied herein. By this funding under said act of 1877, and payments made from time to time, the bonded indebtedness of the city is reduced some $2,200,000, and the whole debt to about $4,000,000 or less. Complainants further show that by an ordinance of the city of Memphis passed on the day 187 , to commence with the 45 corporate year, provided for a sinking fund and the appointment of sinking fund commissioners who were appointed and qualified; and it was further provided for by said ordinance that the tax collectors should pay over direct to said sinking fund commissioners the taxes levied and collected for that purpose, which was to be used by them in retiring or paying the bonds of the city as they became due. They are (or were) required to receive this fund as a special fund which could be used in retiring the bonds of the city as they became due, alone and for no other purpose. Said sinking fund

commissioners entered on the discharge of their duties and so continued until they vacated their offices as hereinafter shown. This sinking fund was provided for the purpose of paying off and retiring the bonds heretofore issued by said city and could be used for no other purpose under the law, and said commissioners were trustees to disburse said fund for the benefit of complainants and all other holders of the bonds of the city of Memphis. Complainants hereby refer to the printed or-
45 dinances of the city of Memphis of 1873, page 189 to 192 inclusive, for all the provisions of said ordinance. Complainants show that they are the holders and owners of a large amount of both the original bonds issued under said several acts of the legislature, and also several of them the holders of a large amount of bonds funded under the said act of 1877 aforesaid, at fifty cents on the dollar, and other creditors of said city, and also holders of large amounts of the same class of indebt'ness. They show that under said act of 1877, interest commissioners were appointed by the said city of Memphis to receive and disburse the tax levied to pay the interest on said bonds; that said interest commissioners also entered upon the discharge of their duties on the day
187 , and so continued to act until a few days ago hereinafter to be spoken of.

46 Again, complainants show that as holders of these bonds by the city of Memphis and having interest fall due from time to time, and also bonds falling due which were not paid by the said city of Memphis, they have brought suit on the same, and have recovered judgement severally against the said city of Memphis on the past due coupons or interest warrants of said bonds, and upon some of said bonds due as follows, to wit, complainants, Garrett and Sons, have recovered judgements thereon as follows, and in the following courts against the city of Memphis:

Robert Garrett & Sons:

M'ch 2nd, 1876.	Judgment U. S. C		24,255 05
June 26th, 1876.	"	"	2,886 91
Dec. 9th, 1876.	"	"	3,810 80
" 18th, 1877.	"	"	3,796 00
June 6th, 1875.	"	"	3,897 00
May 31st, 1877.	"	"	3,794 00
Total judgements			$43,389 76

Complainants Walton:

1st C. C., June 22, '75		$6,390 00
2nd " " 22, '75		2,494 00
47 U. S. C., June 26, '77		3,886 75
" May 31st, '77		2,573 09
" Dec. 9, '76		2,587 73
Total judgements		$17,931 57

Thos. Swan, U. S. circuit c., U. S. C:

May 31, '77.	Judgements	722 00
M'ch 2, '76.		3,305 90
June 1, '77.		3,983 05
Dec. 9, '76.		1,957 65
Total		$9,229 20

P. C. Bethel have recovered the following judgments in U. S. courts:

April 14, '75. Judgements	8,903 00
June 26, '76.	9,584 75
Dec. 9, '76.	2,120 00
1873.	36,000 00

In circuit court of Shelby County, as follows:

June 22, '75	1,895 00
Octo. 20, '75	3,090 06
Total	$66,720 33

Complainants Rich'd Lathrs has recovered the following judgements in the circuit court of the U. S. for the district of West Tennessee:

May 31, '77. Judgements	2,803 10
June 26th, 78.	2,467 60
Total	5,270 70

48 Complainants Stalhaw & Taylor have the following judgements in the circuit court of the U. States for the district of West Tennessee:

June 26th, '76	1,336 15
M'ch 2nd, '76	787 50
June 6, '78	2,467 60
Total	$4,591 25

Complainants F. W. Bennett has the following judgements in the U. S. circuit court, district of West Tennessee:

M'ch 2nd, '76. Judgement	$3,931 20

Complainant George G. Williams has the following judgements in the U. S. circuit court of the district of West Tennesse:

M'ch 2nd, '76. Judgement	$2,419 25

Complainant W. W. Spence has the following judgements in circuit court of U. States, district of West Tennessee:

M'ch 2, '76. Judgement	$2,116 50

Complainants Thos. Branch & Co. have the following judgments in the circuit court of U. State', district of West Tennessee:

	June 4th, '76. Judgement	3,360 90
49	April 14, '75. Judgment	4,755 91
	June 26, '76. "	4,676 85
	In the circuit court of Shelby County	1,710 00
	Total	$14,503 66

Complainants The C'emical National Bank has the following judgments in the circuit court of the U. S., district of West Tennessee:

Sept. 2, '75. Judgement	3,887 96
June 26, '76. "	11,025 00
Total	$14,912 96

Complainants Zeil & Sons have the following judgements in the same court:

Sept. 2, '75. Judgement	1,440 00
Dec. 18, '77. "	972 25
Total	$2,412 25

Complainant Andrew Reid has the following judgements in U. States circuit court, district of West Tennessee:

June 26, '76. Judgement	9,703 00
Dec. 18th, '77. "	3,386 02
Total	$13,089 02

Complainants Jno. Stewart has the following judgements in the
50 circuit court of U. States, district of West Tennessee:

M'ch 2, '76. Judgement	4,828 50
June 26, '76. "	6,665 05
Dec. 9th, '77. "	10,487 50
Total	$21,981 05

Complainant J. B. H. Smith has recovered the following judgments in the circuit court of the U. States:

Dec. 9th, '76. Judgements	1,957 50
June 6, '78.	1,443 00
Total	$3,400 50

Complainants P. S. March has in the circuit court U. States the following judgement:

May 31, '77	$9,991 55

Complainant T. S. Fossick has the following judgements in the circuit court of U. States, western district of Tennessee:

April 9, '75. Judgement	$12,246 50

Complainant F. A. Crook has in the circuit court of the U. States, district of West Tennessee, the following judgments:

M'ch 2, '76. Judgment	1,857 33
Dec. 18, '77. "	665 35
Total	$2,522 68

Complainant Baltimore Equitable Society has the following
51 judgements in the circuit court of U. States, western district of Tennessee:

M'ch 7, 76. Judgment	1,444 33
Dec. 8, '77.	3,131 85
Total	$4,576 18

And besides the judgements, complainants severally hold and own a large amount of past due bonds and coupons, as well as other city indebtedness held by some of them due, and they also severally hold large amounts of bonds of various kinds not due; some hold the old bonds, and others the new funded bonds; altogether aggregate many hundred thousands of dollars, all issued by express authority from the legislature of the State of Tennessee.

Complainants further show that in nearly all of said several judgements they have procured perem'tory writs of mandamus from the
52 circuit court of the United States for the western district of Tennessee, and same from circuit court of Shelby County, and same from supreme court of Tennessee; and that in obedience to said writs of mandamus the said city of Memphis has levied a tax to pay the same, together with other judgments of other parties, to be paid and collected in money, specifying each amount, and party for whom the levy was made each year, and known as the "Sundry Mandamus Tax," for said years; these levies were made for 1875, '76, '77, '78; the ordinance levying the tax for each year, showing the amounts and parties, will be filed on or before the hearing, showing the amount levied each said year for each of the complainants, as well as others in the same class included the same levy.

Complainants show that a part of the said levies for the differ-
53 ent years have been collected, and paid over to the parties on the several judgments, and complainants have been paid part of the said judgements from said collections, except that nothing has been collected by any of them for the mandamus for 1878; though part has been collected and is now in the hands of the county trustee, and some in the German National Bank of Memphis, the same having been deposited there by J. C. Neely, city treasurer, and perhaps in other banks in said city.

Complainants further show that said sundry mandamus tax is special. It is a special trust fund for the years to be applied solely to the payment of complainants' several judgments, for which it was levied, as shown by the different ordinances levying the same for the different years aforesaid, and can be applied to no other purpose under the law.

54 There is some $450,000 of this special tax which is trust fund for complainants and others yet uncollected and not paid over for the various years aforesaid, in which complainants are largely interested. Besides this, complainants show that for 1875, '6, '7 & '8 there are other special mandamus taxes that have been levied which is a trust fund for special purposes, to wit, the tax known as the Brown mandamus, which belongs to Brown and can only be paid over to him until his judgment is paid; also the sundry indebtedness tax for 1876 levied for the purpose of paying certain specified judgments. All these together uncollected amount to in the aggregate *to* something near $900,000, which is a special trust fund for the payment of the special debts. Besides these special trust funds, an interest tax has been levied for many years

55 for the purpose of paying the interest on the bonds of said city as they became due, of which there is some three hundred thousand dollars due and unpaid to the city of Memphis. This tax can now be applied to the payment of creditors and become a general tax. Besides this, there is due and uncollected some $25,000, which was levied for the purpose of paying or retiring the bonds of said city as they became due. This is now a general fund, as complainants are advised, and liable for payment of debts. Besides, there are other taxes due the city of Memphis for special as well as general purposes amounting to many thousands of dollars which ought to be collected. The privilege tax, which was formally appropriated to the payment of the firemen and policemen, prehaps now becomes a general assets when collected for payment of debts, since Memphis has no longer firemen or policemen to pay.

56 But all these questions as to the proper distribution and appropriations of said funds are entitled to the judgment of the court and for the collection and disbursement of all these trust and general funds.

Complainants are advised and charged that the mayor and city treasurer and other officers of the city of Memphis are or were trustees, whose duty it was to collect said taxes and sums of money and pay the same over according to law; in fact these officers, as complainants are advised, were all mere trustees.

This being the situation of officers, complainants show by an act of the legislature of the State of Tennessee, approved Jan'y 31st, 1879, the charter of the city of Memphis was declared to be abolished, and so far and to such an extent as it was in the power of said legislature to do; so said charter of the city of Memphis was repealed, and the city

57 of Memphis blotted out as though it never were, and all offices & officers abolished thereby, so far as said levy is concerned, and if this act be valid no office or officers now exist to carry out the trust aforesaid, to collect these funds, and pay them over to the parties entitled. Said act provides that from and after the passage no officer of said corporation shall exercise or attempt to exercise any of the powers or functions of his said office.

And complainants further show that the mayor and city treasurer and other officers of said corporation have treated said acts as valid, and acted on the same; resigned and abandoned their positions and trusts and left the same unexecuted, and there is now no one to take charge of these funds and execute these trusts in which complainants are so largely interested; all these assets and taxes due to said

58 city, which constitute part of the assets of said corporation, have been abandoned and there is no one left to look after or collect them, who will do so. Besides this, all the other property of said corporation, real, personal, and mixed, which constituted its assets, are without any one to take charge of the same. Said corporation was and is largely in debt, as before stated.

Complainants show that by the 4th section of said act the legislature has assumed to withdraw and hold all the public buildings, squares, promenades, and parks, wharves, streets, alleys, fire-engines, hose & carriages, horses and wagons, engine-houses, engineer instruments, and all other property real and personal used by said corporations for the municipal purposes, and transfer the same to the control and custody of the State as public property.

59 Complainants are advised that as creditors, having valid debts against said corporation under the said several acts of the legisla-

ture, their rights are vested and cannot be divested by any subsequent act of the legislature; this portion of said act is unconstitutional and void; that even if the repealing part of said statute be legal that this part is not. That upon the dis'olution of said corporation and the repeal of its charter all its property of any description and kind became and was assets for the payment of its debts in the order of priorities, and that the legislature has no power to direct said assets from the creditors, and the attempt to do so is illegal and void and in violation of the Constitution of United States.

60 Complainants show that they are informed and believe that at the date of the repeal of said charter aforesaid, there was in the hands of treasurer of the city of Memphis a large fund collected for the special purpose aforesaid, and perhaps a considerable amount which belongs to the general fund, after the repeal, which is now, as they are informed and believe, deposited in the German National Bank of Memphis, and there is no one legally authorized to receive it. A certain portion of this fund belongs to complainants. They further show, on information and belief, that at the date of the passage of said act, Jan'y 31st, 1879, there was a large amount of taxes belonging to these said special trust funds and to the sundry mandamus fund of 1878, as well as the general fund in the hands of Geo. B. Fleece, county trustee an' ex-officio tax collector of the city of Memphis, being amounts

61 collected on the taxes of 1878, and the same is still in his hands, there being no one legally authorized to receive it and pay it over or disburse it; much of this fund belongs to complainants.

Complainants would here show that after the approval of this act repealing the charter of Memphis, several executions were levied by garnishment from the circuit court of the United States upon the various funds of said corporation in the hands of said county trustee George B. Fleece and the German National Bank and others, and among them, executions on judgements of complainants. Complainants also levied executions upon several pieces of real estate belonging to the defendant corporation, to wit, certain engine-houses, market-houses, and

62 other real estate, the particulars of which will be fully shown in the progress of this cause. And complainants submit the question to the court, whether they gain any priority over other creditors standing in like attitude with themselves by such levys, or whether said assets shall, notwithstanding the levy of complainants and other creditors, have to be brought in and administered in common among the creditors, pro rata, who stand in like attitude.

Complainants further show by another act of the legislature of the State of Tennessee, approved Jan'y 31st, 1879, entitled An act to establish taxing districts in this State, and to provide the means of local government for the same, the legislature attemp's to establish a taxing district to be governed by certain officers and commissioners

63 therein named, said taxing district embracing the same geo'raphical limits, the same meets and bounds, the same territory exactly as did the city of Memphis when charter was repealed by the other act aforesaid, approved the same day, and attempted to confer certain powers of government on said commissioners, the same in effect as that theretofore enjoyed by the city of Memphis, except that of taxation, but said act provides that said taxing district shall not be liable for any of the debts or liabilities of said city of Memphis. In other words, complainants show that by the said first act the legislature repeals the charter of the city of Memphis, abolish all its officers and offices, appropriates all the assets of the dis'olved or defunct corporation, abolishes

all its powers, and assumes to take away and dispose of all its
64 assets of every kind, takes away from the creditors all remedy for the collection of their debts, and do not attempt to supply any other remedy of any kind whatever.

Complainants further show, that by the 14th section of said last-named act the said legislature assumes to enact "that the fire-engines, hose and carriage, ho'ses & wagons, engine-houses, public grounds, parks, promenades, wharves, streets, alleys, engineers' instruments, and all other property, real and personal, hereto' used by said corporation (the city of Memphis) for purposes of government, are hereby transfer'ed to thecustody and control of said board of commissioners (of the taxing district) for the uses to which said property has heretofore been applied," &c., &c. Said section further provides that
65 the taxes heretofore levied as privilege taxes by said city of Memphis, and set apart for the government of the police and firemen, shall be paid out as collected, under the provissions of this act, to the said policemen & firemen. Complainants charge that said section so far as it attemp's to take the assets of said dis'olved corporation of any kind and give it to the taxing district or to the State is unconstitutional, illegal and void, it having no right to take or appropriate the property and assets of said dis'olved corporation and to keep the creditors from it in this way. They are advised that upon the dis'olution of said corporation by the repeal of its charter, that all and singular its assets are and ever should be subject to the claims of
66 creditors, including all taxes then levied and uncollected, as well as the taxes collected and in hands of the different officers of said dis'olved corporation, as well the wharfage tax as the privilege tax, as well the taxes collected and uncollected for 1878 as the collect'd and on hand; and said act, so far as it attemp's to divest the same or any part thereof impairs the obligation of the contract of complainants and other creditors of said corporation, is in violation of the Constitution of the United States and State of Tennessee, and is void; but complainants have been informed that the officers of the taxing district aforesaid do not claim any of the assets of the said city of Memphis, and have abandoned the same, and assume no control over them except, perhaps,
67 part of the realty and fire engines and horses are claimed by them, but as to all other property and assets they disavow any claim. They are further advised that the tax books and books of account of said city of Memphis, which contain the evidences of all the taxes due as hereinbefore set out have no one who can legally take charge of and protect them; that the watchman has been withdrawn from the city hall, and that the said books are in great jeopardy and might be mutilated or destroyed.

Complainants show that the property belonging to the said corporation, when said repealing act was approved, consisted of the real estate set out in Exhibit A hereto and made part of this bill, but need not be coppied; the past due and uncollected taxes, including those of 1878, collected and not collected, amounting in the ag'regate to
68 about $3,000,000; all fire-engines and hose-wagons, and horses, carts, and mules, &c., &c.; all the safes, desks, chairs and office furniture of the city hall, including all lands that have been sold for taxes and bought in by said city from time to time; all mortgages upon property, and equitable as well as legal titles held by it of any kind; all cash or money on hand in possession of any officer of said city at date of the repeal, to wit, interest fund in the hands of the interest commissioners, sinking funds in the hands of the sinking fund commis-

sioners, also wharfage fund and privilege tax, as well as everything else it then owned, including its parks, squares and school houses, market and engine houses of every description. All of these
69 should be brought in and applied and all assets marshalled for the payment of debts.

In addition to this, complainants are advised and charge that when the above assets are exhausted, for whatever may be left due from said corporation the corporators and members of said corporation are individually liable, and in this case all the inhabitants of said city of Memphis will be bound in their personal estate and property as well as individual for the residue of the entire debt unpaid by the assets, and that a court of equity has the power to make an assessment upon all of said corporators and inhabitants of said corporation so dis'olved for the pro rata amount sufficient to pay the entire debt unpaid by the assets on hand, as well that which is due and that which is not due, and
70 will bring them before the court from time to time, when required, and render jud'ment against them for that purpose, for without this complainants have left them no remedy for the collection of their debts if the act repealing said charter of Memphis be valid, and if necessary complainants will bring in said corporators for this purpose. For upon information and belief they allege that said repeal was procured by said city of Memphis and its corporators for the avowed purpose of entirely defeating the claims of complainants and other creditors of said corporation, and all of said legislation of Jan'y 31st, '79, was by them procured for that purpose, and with the intent of defeating and beating complainants and other creditors out of their just debts.

Complainants submit that all the taxable persons and property
71 within the corporate limits are bound for said claims, and this court will take an account and make an assessment sufficient to pay the entire *the entire* debt upon them and the said property, give judgments speedily and have the same collected, and the debts paid; in a case like this, in order that justice may be done to creditors, the court should do what the corporation ought to have done.

Complainants show that unless a receiver be promptly appointed herein to take charge of these assets and property and tax-books and uncollected taxes due said corporation, and the different funds on hand which is in litigation, and collect up and protect the assets of said dis-'olved corporation, complainants are in great danger of loosing their claims and said assets being lost and destroyed.

The premises considered, complainants pray as in the said orig-
72 inal bill, and that this, an amended and supplemental bill, be taken and considered therewith, and in addition thereto they pray that the city of Memphis be made a party defendent to this amended and supplemental bill, and that in addition thereto the following parties be made parties defendent thereto, to wit, John R. Flippin, mayor of the city of Memphis, W. J. Chase, W. Hewitt, James Elder, Simon Green, H. G. Dent, Marcus Jones, W. H. Bowen, Jno. Morris, William Benges, Geo. Hassinger, composing the board of alderman of city of Memphis, and James Bohen, D. H. Goodyear, W. P. Proudfit, Chas. Quentel, M. Snowden, J. H. White, W. H. Bates, M. Selig, L. L. Lonhan, P. O. Wood, Andrew Penkert, Herman Caro, Thos. Boyle, Peter Tracey, W. J. Crosbie, W. O. Harvey, Thos. Barnett, P. M. Patterson, L. D.
73 Grant, W. M. Radford, composing the common council of the city of Memphis, all together composing general council of the city of Memphis, in their official capacity, and as trustees of said corporation of the city of Memphis, and all residents and citizens of Shelby County,

Tennessee; they pray that all other parties named in the caption hereof be made parties defendants by further process and required to answer to same rule day of the writ; that subpœna and process and copy issue, and that they be required to answer the allegations of this bill to a rule day of this honorable court.

Complainants pray that this may be taken and considered as a general creditors' bill for all who may come in within a time limited by this court and be made parties and prove their claims, and that the
74 rights of the creditors be determined and settled to the different funds enumerated in this bill and to the assets of said corporation. They also pray that a receiver be appointed by this honorable court, to be empowered and directed to take charge of all the tax books and papers of said municipal corporation, together with its records and books of every description; that he take charge also of all the tax books and bills and accounts for all taxes heretofore levied by the city of Memphis for all purposes which have not been collected and yet due and unpaid to said city of Memphis, of whatever kind and description; that said receiver be empowered to collect the same in any manner, by distress warrants, or in any manner deemed expedient by the
75 court, and bring or prosecute any suit or suits in any court for the collection of the same, and that he be instructed and required to keep seppərate accounts of each class of taxes collected as appear on the various tax books of said corporation, and to keep for the time being until the rights of all persons be determined; that he be empowered to take charge of all money now on hand which has been collected from any source for taxes or rents or otherwise, and that all parties be required to pay the said funds to him, of which said receiver shall keep seppərate accounts of each class of funds, and pay the same out to the parties entitled under the order of this honorable court; that said receiver be directed to take charge of all the real estate of said
76 city of whatever discription and wherever situated in which said corporation has any interest in any way whatever, equitable or legal; that he take possession of all the personal property belonging to the said corporation at the time of its dis'olution of every kind, but that for the time being and until the rights of parties shall have been determined and some arrangements be made that the fire engines, hose, and horses, and paraphanalia of the fire department be not interfered with so as to destroy or impair the efficiency thereof; that when the assets are collected, in that they be disbursed under the order of this court to the parties to whom they belong in law, or as the different parties are entitled; that said receiver be empowered to sell any part of said assets from time to time or all of the same; that from time to time said
77 receiver be given such power and instructions as may be necessary, and his power defined, and further directions be given him that when it shall become necessary that other parties and corporators be brought before the court, that if the present assets are not sufficient to pay all the debts, that assessments be made upon all the corporators and property in the city of Memphis for any claims that may remain unpaid of said debts whether due or not due, and that judgments be rendered against said parties for amounts found due; that accounts be taken to assertain amounts of debts as may be deemed expedient from time to time, and complainants' debts paid.

Complainants pray for all such other and general and special relief as they may be in equity and law and conscience entitled to in the
78 premises, and will ever pray.

MEYERS & SNEED,
Sol. for Complainants.

District of West Tennessee.

STATE OF TENNESSEE,
Shelby County:

Personally appeared before me D. E. Myers, attorney and agent for complainants herein, who are absent from the district, who makes oath that the matters and things herein stated are true, to the best of his knowledge and belief.

D. E. MEYERS.

Sworn and subscribed before me this 7th Feb'ry, 1879.
BELL W. ETHERIDGE, *Clk.*

79 No. 322. Circuit court of the United States, western district of Tennessee. R. O. Garrett & Sons et als. vs. City of Memphis et als. Amended bill. Filed Feb'ry 7th, 1879. Bell W. Etheridge, clk. Endorsed as above.

80 In the circuit court of the United States for the district of West Tenneseee. In equity.

To the honorable the judges of the court:

HOPKINS LOUDON
vs. } 323.
THE CITY OF MEMPHIS.

The plaintiff, who is a citizen of the State of Illinois, brings this his bill for relief against the defendant, which is a municipal corporation, and a citizen of the State of Tennessee, and thereupon states and shows—

That on the fourth day of July, 1876, he and the defendants entered into a contract in writing, whereby, in consideration of the payments therein stipulated to be made, the plaintiff agreed to execute in a
81 workmanlike manner, to the satisfaction of the city engineer, and in accordance with the conditions of the contract and specifications attached thereto, the following work, namely:

To take up the Nicholson pavements, furnish the necessary stone, sand, and gravel, and to pave with stone the west side of Main street, between the western rail of the street railroad and the curbstone of the western sidewalk, and extending from the Louisville and Memphis Railroad depot to the Mississippi and Tennessee Railroad depot.

In and by the said contract it was expressly stipulated—

(1.) That all materials and all work done should at all times be subject to the inspection of the city engineer, or other authorized agent of the city of Memphis. Materials might be inspected either on cars
82 or barges, or at the site of the work. Upon the direction of the engineer the plaintiff was to take up and rebuild without charge all work improperly done, or the city might do it at his expense. If the plaintiff brought on the street any materials which did not strictly conform to the requirements of the contract, the city engineer had the right to order the same to be removed forthwith thereupon. And in case the plaintiff or his employees neglected or refused to remove such materials the city engineer might have the same removed at the plaintiff's expense, deducting the cost of such removal from the plaintiff's account.

(2.) The plaintiff should not employ incompetent or disorderly workmen on the work, and should discharge such when required to do so by the city engineer.

83 (3.) No work was to be paid for as extra work unless it had been ordered in writing by the city engineer, and unless a price had been beforehand agreed on by the parties.

(4.) The plaintiff should sustain any loss or damage incurred in the prosecution of the work, whether growing out of the character of it or from difficulties not foreseen at the time of making the contract, or from the action of the elements, or from delays by obstructions on the line of the work.

(5.) The work was to be commenced on or before August 5th, 1876, and to be completed on or before December 15th, 1876.

(6.) The plaintiff was carefully to preserve the stakes and levels given by the engineer, and in case of neglect or failure in this particular was to be charged with the resulting expense.

84 (7.) The city of Memphis agreed to pay the plaintiff for completing the work specified, in accordance with the conditions and specifications of the contract, one and sixty-hundredths dollars ($1.60) per square yard of pavement laid.

(8.) Payments were to be made monthly upon the return of the city engineer at such time as the mayor of the city might designate, with a reservation of twenty (20) per centum as a security for the faithful performance by the plaintiff of the agreement.

And when all the work embraced in the contract had been completed agreeably to the conditions of the same and to the specifications before mentioned and to the satisfaction of the city engineer, a final estimate of the quality, character, and value of the work was to be made,

85 and the balance due the plaintiff was to be paid to him upon his giving to the city a release under seal from all claims growing in any manner out of the said agreement.

All payments were to be made in warrants of the city, as required by the ordinance dated June 12th, 1876, authorizing the construction of the pavement aforesaid, or in ledger balances, at the option of the mayor.

(9.) The city engineer or the mayor and improvement committee might add to or deduct from the quantity of work above mentioned to be done, and the plaintiff was to be paid for the quantity of work actually done by him at the price before specified. When such additions or deductions were ordered the plaintiff was to be notified in writing.

(10.) If the plaintiff failed to complete the work within the

86 time specified in the contract it was declared he should pay a penalty of eighty dollars (80.00) per day for every day's delay beyond the said specified time.

(11.) It was expressly agreed that the city engineer, or mayor and improvement committee, might suspend the work while in progress for any failure on the part of the plaintiff, and that such suspension should not affect the right of the city to damages or penalties incident to such failure. In case of such deficiency of progress in carrying on the work as in the opinion of the city engineer would prevent its completion within the period named, or in case of non-compliance with said engineer's directions in regard to the execution of the work, the city, it was provided, might foreclose the contract in reference either to the whole work or any part thereof, on giving the plaintiff a written notice

87 ten days previously to that effect, and in case of such foreclosure of contract, it was provided further, the plaintiff should forfeit

his claim to all moneys that might then be due him on account of it by the city, and that the city might let the work to other parties.

(12.) The work was to be commenced and carried on at points designated by the city engineer.

(13.) In case any epidemic disease should prevail so as to prevent the plaintiff from maintaining a sufficient force to complete the work within the period named in the contract, an extension of the time of completion shall be allowed him sufficient to compensate for the unavoidable delay.

(14.) If the plaintiff should be delayed by low water in the Ohio River he was to have an extension of time equal to the number of the days he might be delayed by such low water, provided in the judg-
88 ment of the mayor of the city he had used due diligence in endeavoring to deliver the stone before the low water season.

(15.) The plaintiff was given the privilege to land his stone-barges at points on the landing designated beforehand by the mayor, and convenient to the work going on.

And (16) it was expressly agreed and stipulated that the payments to be made under the contract were to be made out of the amount set apart for public improvements in the budget for the year 1876.

In the specifications annexed to and made a part of the said contract the work to be done was particularized, the materials to be used were designated, the manner of doing the work was prescribed, and it was there declared that until all surplus materials, earth, sand, rubbish, and refused stones were removed from the street, and the fact was
89 established by the certificate of the city engineer, filed in the mayor's office, the work should not be regarded as complete according to the agreement.

The plaintiff executed and delivered to the defendant a bond with good and sufficient security, conditioned that he would perform his part of the said contract.

For more particularity and certainty as to the said contract, specifications and bond, the plaintiff here refers to the same in the possession of the defendant, and prays the same may be produced and filed to be used on the hearing. If necessary the plaintiff will on or before the hearing file copies as parts of this bill.

The plaintiff states and shows that soon after he so entered into the foregoing contract he entered upon the performance of the work he therein agreed to do, and he continued in the performance of the
90 said work and progressed therewith as fast as it was possible for him to do until he completed the same, as will be hereafter more particularly stated. In the month of September, 1876, he completed $829.16 of pavement; in the month of October, $2,250.54; in the month of November, $4,465.62; in the month of December, $501.25; in the month of March, 1877, $4,099.97; in the month of April, $4,055.81, and in the month of May, 1877, $10,151.42. For the said work as so completed, the city engineer gave the plaintiff monthly estimates from time to time as the work was done, and the sums due him by such estimates, as he is informed and believes and avers, were carried up to his credit on the proper books of the city as the estimates were returned.

The total work done under the said contract by the plaintiff, as so estimated by the city engineer, was 23,346.2 sq. yards, which at
91 the price fixed by the said contract amounted in value to the sum of $37,152.48.

The defendant made the plaintiff payments on account of the said work from time to time, until, as the plaintiff is informed and believes

and avers, such payments amount to about the sum of $26,353.77. This leaves the balance due the plaintiff by the defendant about the sum of $10,798.71, besides interest from the completion of the work; the said sum and interest remain unpaid and due by the defendant to the plaintiff, and the defendant refuses to pay the same; and the plaintiff has brought an action at law against the defendant to recover the same, which is now pending on the law side of this court, No. 2430 of the docket, and to which the plaintiff here refers as part of this his bill.

Though the said suit at law has been at issue and for trial for
92 two terms of the court, the defendant has contrived to avoid a trial, and now it is probable no trial can be had before the November term, 1878, of the court, if then.

The plaintiff states and shows that the defendant has no substantial ground of defence to the said action, and that the pretexts and subterfuges it is setting up in defence of the same, and as the reasons why it has not paid the plaintiff the sum of money it owes him, are wholly without just foundation.

At the commencement of the work under the contract the defendant appointed a number of inspectors, whos' duty it was, and who in fact did inspect and pass upon the materials used in doing the work, and superintend and direct the manner of doing it. The defendant and the city engineer directed the plaintiff to obey the directions of such inspectors, and he and his employees invariably did so; they saw
93 and approved of all the materials used and all the work done. Whatever they or any of them objected to was rejected or its place supplied by what suited them; the plaintiff in fact had no independent discretion as to the materials or the work, but was wholly and exclusively under the control and direction of the defendant, the city engineer, and the said inspectors.

After the work was done if any defects were pointed out they were immediately remedied. The road-bed was shaped and prepared as directed by the city engineer, and then covered with sand and gravel to a depth of not less than three inches, as required by the contract and specifications, and was then approved by the city engineer; the city engineer also accepted and approved all the stone and other material used; after the pavement had been laid down and before it
94 was covered with gravel or sand, as specified, it was seen and inspected by the city engineer; and after being accepted and approved by him and finished off, and covered with gravel and sand, and rammed as required by the specifications, it was, by direction of the city engineer, cleared and opened and turned over to the public for use.

It was understood when the contract was made that the bulk of the materials the plaintiff expected to use in doing the work was to come down the Ohio River, and in view of that fact the provision as to low water in the Ohio River, number 14 of the contract, was inserted. And when the contract was made the water in the Ohio was low, and it continued to get lower till it would not float the barges on which the plaintiff was required to bring out his stone. The river then froze over, and the barges could not be brought out till about February, 1877.
95 After using up the materials he had on hand, and such as he could get, the plaintiff was obliged to suspend work until he could bring out his barges as stated above.

By reason of the said facts the plaintiff was not able to finish the work by the 15th December, 1876, as specified in the contract. But he lost no time unnecessarily, and in the *the* judgment of the mayor he used due diligence in endeavoring to deliver the stone before the low water

season; and by reason thereof he was entitled to the extension provided for in the said contract, and the same was granted him; and within such extension he completed the said work as aforesaid. No objection was made by or on behalf of the defendant that the work did not pro-
gress as fast as it should, or was not completed in time; but the
96 defendant allowed it to proceed, and insisted it should proceed after the time specified in the contract for completing had passed, and failed wholly to foreclose the contract as it had the right to do if the plaintiff had been in default, and stop the work; but from time to time as it progressed, and afterwards, when the whole was finished, the defendant *excepted* the pavement as stated above, and has since had the same in use.

After the work was completed, and the plaintiff called for his money, he was met by members of the improvement committee of the general council, and perhaps by other members of the general council, with objections to the character of the work he had done.

Thereupon the plaintiff addressed a special committee to whom the matter had been referred a communication, of which Exhibit A hereto
is a copy.
97 He then procured a statement from the city's inspectors, who had superintended the work, of which Exhibit B hereto is a copy, and caused the same to be presented to the general council.

About the same time he preferred a formal request to the general council, of which Exhibit C hereto is a copy, to allow him the same due him.

And still failing to get what was due him, he, about the 11th October, 1877, sent to the general council a proposition, of which Exhbit D is a copy.

But all his efforts to effect an adjustment were without effect.

About the 30th June, 1877, the city engineer had made a final estimate of the work done by the plaintiff, and had shown the amount due him
to be as hereinbefore stated.
98 A copy of the said final estimate will be filed with and as a part of this bill, and marked Exhibit E.

The plaintiff believes the said estimate is correct, except the city engineer deducts from the amount he shows to be due by the defendant to the plaintiff for work done under the contract $696.61, for defective workmanship. This deduction is not correct, and the city engineer had no authority to make it. He had the option to decline the work, or to have it made to conform to the contract and specifications, but he had no right to put it at anything less than the contract price. The plaintiff was always ready and willing and offered to remedy any defects that existed. And, besides, the defendant having undertaken the direction
of the work, and the selection of the materials, through the city
99 engineer and its inspectors, and having obliged the plaintiff to be governed by what they said and did, and having overlooked the materials as they were used, and the work as it was done, and accepted them, and afterwards accepted them when complete, as above stated, it had no right in the final estimate to make the said deduction.

As the plaintiff is informed and believes, the mayor was in favor of paying what was due him, as shown by the said final estimate of the city engineer. But the general council could not be brought to agree to the proposition. It called on the city engineer for a report, and about the 3d October, 1877, he made to it a report in writing, of which Exhibit F hereto is a copy.

The facts stated in the said report, as the plaintiff is advised and be-

lieves. show very clearly that he is entitled to receive in his said
100 action at law the said sum of $10,799.71, and interest as aforesaid, and he has every reason to believe and does believe he will obtain such recovery whenever the said action is tried.

But, if the plaintiff is forced to await the results of the said action at law, he fears and believes and avers he will in all probability entirely fail to get payment of the sum due him as aforesaid.

By the charter of the city it was the duty of the general council immediately after the assessment of property for taxation to make out what is known in legislative parlance a budget, and to apportion the one dollar and sixty cents of taxes allowed to be levied on each one hundred dollars' worth of taxable property to defray the various items of expense incident to carrying on the city government, of which not more than one dollar of the dollar and sixty cents could be appro-
101 priated to defraying the general expenses of the city, including the improving and repairing of streets. And the general council could not engage or contract for any item of expense without first apportioning a sufficient amount of the one dollar of general tax for the current year to pay such engagement or contracts upon the basis that the whole tax would be collected, and parties contracting with the defendant could not by reason of their contracts acquire any general claim against it, but were required to look solely to the sum set apart specially for the payment of their claims, and contracts made by the defendant were not valid or binding unless they specified the fund out of which they were to be paid; and then should only constitute a liability to be enforced out of the special fund for the year in which
102 the contract was made and the tax was levied or assessed and collected.

Before the contract aforesaid between the plaintiff and defendant was entered into, the defendant made out its budget, and by an ordinance approved by the mayor on the 21st February, 1876, the estimated revenue for the said year, being $389,000.00, was set apart and apportioned as follows: For the police department, $50,000.00; for the fire department, $50,000.00, and for public improvements, $150,000.00. The rest is not material here.

A copy of the said ordinance will be filed with and as a part of this bill, and marked Exhibit G.

Afterwards, on the 22d May, 1876, an ordinance of the general council was approved by the mayor, by which the general tax for 1876, or so much thereof as was set aside for public improvements, was set
103 apart and pledged for the payment of $40,000,00, which the ordinance authorized the mayor to borrow for the use of the department of public improvement for the year 1876, and which general fund so set aside for public improvements, the ordinance declared, should not be used for any other purpose, and a separate account thereof should be kept, and the same should be paid into the treasury and be held and applied for the payment of the sums borrowed until they were paid.

A copy of the said ordinance will be filed with and as a part of this bill on or before the hearing, and will be marked Exhibit H.

No loan, as the plaintiff is informed and believes and avers, was in fact contracted by the mayor under the authority of the said ordinance for the use of the department of public improvements, but instead thereof, on the 12th June, 1876, an ordinance was passed by the
104 general council, which was afterwards approved by the mayor by which the contract so entered into by and between the plaintiff and the defendant as aforesaid was authorized.

A copy of the said ordinance will be filed with and as a part of this bill, and marked Exhibit J.

It was in view of the foregoing state of facts and law that the provision No. 16 of the contract, that the payments to be made under the contract should be made out of the amount set apart for public improvements in the budget for 1876, was incorporated.

The plaintiff states and shows that no contract, except the one before set out between him and the defendant, was ever made under the provisions of the said ordinance of June 12th, 1876. And as he is informed and believes and avers no contract besides the one so made with
105 him was ever made by the defendant in such a form or manner as to constitute a specific charge on the said special fund, so set apart as aforesaid, for public improvements for the said year 1876. Or, if any such contract was made, all has been paid that became due from the defendant under it, so that now there remains owing by the defendant nothing for which the said special fund so set apart for public improvements for the said year 1876, stands pledged or specially charged, except the debt aforesaid due by the defendant to the plaintiff.

The defendant has already collected and paid out, or otherwise disposed of, the greater part of the general tax, the one dollar on the hundred dollars of taxable property aforesaid, so levied for the year 1876, and so apportioned and set apart as aforesaid, and so in part
106 charged with the payment of the sum that became due the plaintiff under the said contract. The portion of the said tax which remains undisposed of has not yet been collected, and it is very difficult to collect it, and a very large part of it, as the plaintiff is informed and believes and avers, will not be collected at all. The amount still uncollected, which is collectible, the plaintiff believes and fears and avers, is but about enough to pay the balance that is due him as aforesaid, and will prove insufficient for that purpose if the defendant continues to appropriate and use it for purposes other then the payment of this debt due the plaintiff, as it has done heretofore. The plaintiff is advised that he may have to look for payment exclusively to the fund to be realized from the said general tax, and that if such fund proves insufficient he may have to loose the balance—at least he is well assured and
107 avers the defendant will set up and rely upon such a position, if it ever becomes necessary for him to seek payment from some other source.

But disregarding its obligations and duty, and the plaintiff's rights, the defendant not only refuses to pay the plaintiff what is due him as aforesaid, but it is collecting the said general tax for the said year 1876, principally in its own indebteness, or the evidences thereof, and not in money, so cannot, if it would, pay the debt due him out of such collections. And if the defendant collects any money at all on account of such tax, and the plaintiff is informed and believes and avers it does collect some little, it altogether fails and refuses to set apart and hold the same for the payment of what is or may be due the plaintiff as aforesaid, but appropriates and uses the same for its general expenditures,
108 or at least for purposes other and different from the payment of the plaintiff's debt. And the plaintiff believes and avers that if it continues this course up to the time he may be able to get a trial of his action at law, he will probably loose a large part if not the whole of his said debt.

In consideration of the premises, the plaintiff, Hopkins Loudon, prays that the city of Memphis may be made defendant hereto, and may be brought in by proper process and required to answer this bill; that an

injunction may issue under the seal of the court, enjoining and restraining the defendant from collecting any of the general tax for the year 1876 aforesaid, remaining uncollected, in any medium but the lawful money of the United States, until an amount sufficient to pay the
109 amount due the plaintiff as aforesaid, and interest thereon, and the costs of the said suit at law and of this suit shall be realized, and commanding and requiring it to set apart and retain such sum, subject to the order of the court here, to abide the final decree which may be herein rendered, or until the further order of the court; that on the final hearing such injunction may be made perpetual; that the plaintiff may have the proper references and accounts, and a decree for the sum due herein, and execution thereon, and all other just, proper, and necessary relief.

And as in duty, &c.

HOPKINS LOUDON,
By WM. M. RANDOLPH, *Sol.*

110 I, Hopkins Loudon, plaintiff in the foregoing bill, do swear that the statements of fact therein made as of my own knowledge are true, and those made from information and belief I believe to be true.

HOPKINS LOUDON.

Subscribed and sworn to before me this 22d day of June, 1878.

H. E. ANDREWS,
U. S. Com'r.

The complainant in my opinion is not entitled, upon the facts stated in foregoing bill, to the injunction prayed for, and the same is therefore refused.

Knoxville, Tennessee, June 24th, 1878.

JNO. BAXTER.

111 Permission is given to file this bill, and *and* plaintiff has leave to move for an injunction.

Jan. 30, '79.

H. B. BROWN.

Know all men by these presents that we, Hopkins Loudon, and Jas. A. Loudon, and , held and firmly bound unto said defendant, The City of Memphis, in the sum of two hundred and fifty dollars; but to be void on condition that the plaintiff do pay and satisfy all costs that may accrue in that behalf in the prosecution of the said suit this day commenced by the said plaintiff in the circuit court of the United States for the western district of Tennessee, at said Memphis, against the said defendant, and also on failure of the said plaintiff to prosecute the said suit with effect.

Witness our hands and seals this 30th day of January, A. D. 1879.

HOPKINS LOUDON. [SEAL.]
JAMES A. LOUDON. [SEAL.]

Approved and acknowledged before me the 30th day of Jan'y, A. D. 1879.

BELL W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

(Endorsed as follows:) 323 E. U. S. circuit court W. D. T. Hopkins Loudon vs. The City of Memphis. Filed 30 Jan'y, 1879. Bell W. Etheridge, cl'k.

112 The President of the United States of America to the marshal of the western district of Tennessee, greeting:

You are hereby commanded to summon the City of Memphis, a corporation, and a citizen of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States in the sixth circuit for the western district of Tennessee at Memphis, in said district, on the first Monday in March next, and then and there to plead, answer, or demur to the bill filed in the office of the clerk of the said court on the 30th day of Jan'y, 1879, against said defendant, by Hopkins Loudon, who is a citizen of the State of Illinois; herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at said Memphis, this 30th day of January, A. D. 1879, and the 103 of American Independence.

B. W. ETHERIDGE, *Clerk.*
H. E. ANDRUS, *D. C.*

MEMORANDUM.—The defendant, the City of Memphis, is required to enter his appearance in this suit in the office of the clerk of the circuit court at Memphis on or before the day on which the subpœna is return-
113 able, or the allegations of the bill will be taken for confessed against said defendant and judgment rendered accordingly.

B. W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

(Endorsed as follows:) No. 323. Circuit court of the United States, western district of Tennessee. Hopkins Loudon vs. The City of Memphis. Summons returned and filed 31 day of Jan'y, A. D. 1879. Bell W. Etheridge, clerk.

At Memphis, Tenn., and at 5 p. m., on the 30 day January, 1879 I personally made known the contents of this summons by reading the same to John R. Flippin, as mayor of the within named, the city of Memphis, no other service made by direction of att'y for pl't'ff.

M. T. WILLIAMSON, *U. S. Marshal,*
By SAM. C. PAINE, *Dep.,*
By G.

Service and 1 m., $2.06.

114 In the circuit court of the United States for the district of West Tennessee. In equity.

To the hon. the judges of the court.

HOPKINS LOUDON
vs. } 323.
THE CITY OF MEMPHIS.

The leave of the court having first been had, the plaintiff now comes and files this his amended and supplemental bill herein, and states and shows—

That he adopts and repeats the allegations, statements and charges of his original bill, as well as the prayer thereof, and prays the same

benefit thereof as if all such matters were herein verbally incor-
115 porated. He prays to be excused from copying or setting out the same to avoid encumbering the record.

Since the said original bill was filed the plaintiff has recovered in court here, in the action at law mentioned in the said bill, a judgment against the city of Memphis for the sum of eleven thousand five hundred and ninety dollars and sixty-one cents ($11,590.61) and the costs of the suit, and it has been adjudged in the said judgment that the amount thereof shall be paid only out of the amount set apart for public improvements by the city of Memphis for the year 1876, as is specified in the contract between the plaintiff and the said city mentioned in the said bill.

The law under which the said contract was made, as well as the
116 said judgment, declared that the liability of the said city thereunder should not be general, but only to pay what might become due under the said contract out of the special fund so set apart for the payment of the same as aforesaid.

The said city of Memphis has not for years had any property subject to execution at law, and since the said original bill was filed the legislature of the State of Tennessee has passed an act repealing the charter of the city of Memphis, and thereby, so far as it had the power to do so, it has destroyed the corporate existence of the said city. It has also abolished, so far as it could by the said act, the offices of all the officers of the said city, and has not designated any person or per-
117 sons to perform their duties, or the duties heretofore incumbent on them.

The tax-books for the year 1876, on which the $150,000 set apart for public improvements in the budget of the city for the said year were charged, are now in the custody of the defendant Moores, and a considerable amount of the taxes appearing thereon have not been paid and remain due; but the said Moores is now without authority to collect the same, and, as the plaintiff is informed and believes, there is no one now designated by law to make such collections.

The plaintiff is advised and believes that he has a specific charge and lien on the said uncollected portion of the said taxes for the pay-
118 ment of what is due him under the judgment so rendered in his favor as aforesaid, and that it is appropriately within the province of this court to enforce and secure to him the benefit of the said lien.

The plaintiff is not able to state whether or not there is a sufficient amount of the taxes so charged with the payment of his said judgment to pay the same or not. But if there is not enough for the purpose, it is simply because the defendant, Flippin, who has heretofore been mayor of the city of Memphis, and the defendant, Neely, who heretofore has been treasurer of the city of Memphis, have in violation of the law and of their duty paid out the sums realized from the taxes so set apart for the payment of the debt to the plaintiff to or for purposes to which the same ought not to have been applied.

119 The plaintiff is advised and submits that both the said Flippin and the said Neely, by virtue of their said offices, were trustees for him of the money that came to their hands from the taxes so set apart for the payment of the said debt so due him, and if they have paid out the same or any part thereof to any one or for any purpose not authorized by law, they are now accountable to him for the same.

The plaintiff is not informed whether the said Neely, as late city treasurer, or the said Moores, as late city back tax collector, has on hand any part of the fund so set apart as aforesaid for the payment of what is due

him under the contract aforesaid, as evidence by the said judgment, and he therefore prays that they may set forth and discover how the fact is.

120 In consideration of the premises, the plaintiff prays that John R. Flippin, James C. Neely, and James W. Moores, all citizens of Shelby County, Tennessee, as well as the city of Memphis, may be made defendants hereto as well as to the original bill herein, and may be required by proper process of subpœna to come in and answer the same.

That the said Flippin and Neely may respectively set forth and show how much of the special fund set apart as aforesaid for the payment of the said sum so due the plaintiff for the work done by him under the said contract has heretofore been collected, and what disposition they or either of them have made or have caused to be made of the same.

That the said Moores, or some other suitable person, may be ap-
121 pointed receiver and directed to proceed to collect the taxes due and unpaid on the city tax-books for the year 1876, and particularly those set apart as aforesaid for the payment of the sum due the plaintiff, and to pay over the sums collected as fast as collected towards the satisfaction of what is due the plaintiff.

That on the final hearing the plaintiff may have a decree against the said Flippin and Neely for the sums due by them respectively to him by reason of the facts aforesaid, and that the proper accounts may be taken for the purpose of ascertaining the same.

That the plaintiff may have the relief prayed in his original bill, so far as applicable to the changed state of facts, and all other just, proper and necessary relief.

WM. M. RANDOLPH,
Sol. for Pl'ff.

122 I, James A. Louden, as agent for Hopkins Louden, the plaintiff in the foregoing bill, do swear that the statements therein made, so far as made from my own knowledge, are true, and so far as made from information and belief, I believe the same to be true.

JAMES A. LOUDON.

Subscribed and sworn to before me this 7th day of February, 1879.
BELL W. ETHERIDGE, *Clk.*

(Endorsed as follows:) No. 323. Eq. H. Louden vs. The City of Memphis. Amended and supplemental bill. Filed 6th Feb., 1879. Bell W. Etheridge, cl'k.

123 In the circuit court of the United States for the western district of Tennessee.

The Ahrens Manufacturing Company, a corporation chartered by the laws of the State of Ohio, and having its situs in the State of Ohio, brings this its bill against George B. Fleece, a citizen of Shelby County, Tennessee, D. F. Goodyear, a citizen and resident of Shelby County, Tennessee, and J. C. Neely, also a citizen of Shelby County, Tennessee, and James A. Newsom, resident of Tennessee, on its own behalf and on behalf of all other judgment creditors of the city of Memphis, upon judgments recovered in the year 1878, other than judgments upon bonds and coupons of said city of Memphis, and complaining, says that the
124 residence of the parties hereto is as above set forth, plaintiff being

a resident of the State of Ohio, and defendant being resident of the State of Tennessee. That the matter in controversy amounts to more than five hundred dollars, exclusive of costs.

That on the 10th day of December, 1874, the firm of C. Ahrens & Co. sold and delivered to the corporate authorities of Memphis a certain steam fire-engine, complete in all its equipments and appointments, and of the most approved manufacture, at and for the sum of five thousand dollars. That said engine has been continuously used from the date of its delivery by the said municipal corporation for the protection of the property therein from fire. That said Ahren Manufacturing Com-
125 pany have succeeded to the business and are the owners of the assets of said C. Ahrens & Co., including notes hereinafter referred to, made by the said city of Memphis for the purchase of said steam fire-engine, and are entitled to enforce all the contracts of said C. Ahrens & Co.

Complainant finds as Exhibit A, a duly certified copy of the act of the legislature of Ohio granting and vesting it with corporate rights, and prays that the same may be taken as part hereof, but not to be copied.

Complainant further states that the said city of Memphis did not pay cash for said engine, but part cash only, and for the amount unpaid it executes to the firm of C. Ahrens & Co. its three (3) promissory notes of date Dec. 10th, 1874, each for the sum of nine hundred dollars due in 12, 24, and 36 months after date respectively, with
126 eight per cent. interest from date until paid. That said notes with interest accrued being past due and unpaid, complainant instituted an action in the circuit court of Shelby County, Tennessee, against the city of Memphis, and on the 29 June, 1878, recovered a judgment against said city for the sum of thirty-four hundred and fifty-six dollars $\frac{20}{100}$ and costs of suits, all of which said sum of $3,456\frac{20}{100}$ with the interest thereon accruing, at the rate of eight per cent. per annum, is still due, owing, and unpaid, except as hereinafter stated; an execution issued on said judgment and was returned nulla bona.

Complainant further states on information and belief that this judgment was the only one recovered against said city for the year
127 1878, except judgments upon bonds and coupons, and that by sec. 63 of the act of the legislature of Tennessee, entitled "An act to regulate and organize municipal corporations of certain population and for the increase and diminution of their powers," approved March 23, 1875, the city of Memphis was prohibited from levying, assessing or collecting a greater rate of taxes than one dollar and sixty cents on each hundred dollars' worth of taxable property in said city. By section 64 of the same act, it is provided that the general council of the city of Memphis should, immediately after assessment of property for taxation, make out what is known in legislative parlance a "budget," and apportion the 1.60 ct. tax to defray the various items of expense incidental to carrying on the city government. That pursuant to
128 this act, the general council did on the 29th Nov., 1878, pass on its final reading an ordinance, which was duly approved by the mayor of said city, wherein and whereby a tax of three cents on every hundred dollars' worth of taxable property in said city was levied on for the purpose of paying judgments against the city for the year 1878, other than judgments on bonds and coupons.

Complainant files a certified copy of this ordinance as part of & Exhibit B to this bill and not to be copied.

Complainant further states that by sec. XCI of the acts legislature of Tennessee, 1875, being an act entitled "An act to more cheaply collect the State, county, and municipal revenue," the office of city tax collector was abolished, and it was provided that all taxes thereafter due and payable to municipal corporations should be payable to
129 and collectable by the county trustee of the county wherein the particular municipality was situate.

That by section 70 of the act entitled "An act to regulate and organize municipal corporations of certain population, and for the increase and diminution of their powers," approved March 23, 1875, power to enforce collection of taxes was given to the general council of the city of Memphis, and provision was made for the collection of taxes by the collector of State and county revenue.

It was farther expressly provided in said section, that for taxes assessed upon real estate within the city of Memphis, there should exist a lien upon such real estate for the payment thereof.

Complainant further states that defendant Geo. B. Fleece is
130 the county trustee of Shelby County, Tennessee, and as such officer is by law authorized to collect the aforesaid tax of three cents on every one hundred dollars' worth of taxable property in said city of Memphis. Complainant further states that the tax-books for the city of Memphis have been delivered to the said Geo. B. Fleece, made out in accordance with section 73 of the act 23 March, 1875, to regulate and organize municipal corporations, &c., and that the said Geo. B. Fleece has been collecting the taxes due for said year, and now has in his hands a large sum collected by him on ⅜ of said taxes, levied to pay the said 3 cent judgment tax, but the same appears by a receipt given by the said Fleece to the said James A. Newsom, who was then and, as complainant is advised, is now the comptroller of Memphis.

131 Complainant further states that on the day of January, 1879, Hon. John R. Flippin, mayor of Memphis, paid Hiram H. Weiman, complainant's secretary & treasurer, the sum of two hundred and eighty-two $\frac{27}{100}$ dollars, it being the amount which the defendant Geo. B. Fleece had then collected and paid over on account of said 3 cent judgment tax. Said judgment is to be credited with that amount.

Complainant is advised that by reason of the premises hereinbefore set out, he acquired a lien on all the taxable real estate in the city of Memphis, and ratable in each parcel thereof to the amount due on it for the aforesaid 3 cent judgment tax.

Complainant is further advised that it is entitled on its own behalf and on behalf of those who own similar judgments, if any there be, to invoke the jurisdiction of this hon. court on account of what is herein
132 set forth.

Complainant further states that when the firm of C. Ahrens & Co. sold the aforesaid steam fire-engine to the city of Memphis, it had full power to levy and collect a tax wherewith to pay for said engine. Complainant says that said engine was necessary to the protection of the property of said city of Memphis from destruction by fire. Complainant says it is still necessary. Complainant says it was in its power, had the general council refused to levy a tax sufficient to pay the judgment obtained as before stated, to have compelled such levy by mandamus.

Complainant further states that on the 29 January, 1879, the legislature of Tennessee passed an act entitled "An act to repeal the charter of certain municipal corporations, and to remand the territory
133 and inhabitants thereof to the government of the State."

By section 3 & 4 of said act all municipal offices held in the

municipal corporations to which the act referred were declared to be abolished, and the holders of them forbidden to exercise the functions pertaining thereto, which said act was approved by the governor of Tennessee on the 31st of January, 1879, and in accordance with a provision therein proclamation was made by the governor and published by the secretary of state declaring that said act applied alone to the city of Memphis.

Complainant further represents to your honors that on the same day the legislature passed another act, entitled "An act to establish taxing districts in this State and to provide the means of local government for the same;" which act was also approved by the governor on 31st
134 January, 1879. By sec. 14 of said act it was provided "that all indebtedness for taxes or otherwise, whether in litigation or otherwise, due to the said municipalities, shall vest in and become the property of the State, to be disposed of for the settlement of the debts of said extinct municipalities as shall be hereinafter provided by law."

Complainant further states to the court that the Hon. J. R. Flippin, late mayor of Memphis, and W. N. Brown, esq'r, late chairman of the board of aldermen of said city, have resigned, and that defendant, D. F. Goodyear, esq'r, the president of the common council, is ex-officio mayor of said city.

Complainant further states that it was the duty of said Geo. B. Fleece to make weekly settlements of all taxes collected by him with the mayor and comptroller of said city of Memphis, and to pay over the
135 amount in his hands to the defendant, J. C. Neely, who is the city treasurer of said city of Memphis. Complainant further states that defendant, James A. Newsom, has in his custody the books wherein were kept the accounts of Geo. B. Fleece with said city of Memphis, showing amount of his collection of aforesaid 3-cent tax for the year 1878.

Complainant is advised that the act of Jan'y 29, 1879, entitled "An act to repeal the charter of certain municipal corporations and to remand the inhabitants thereof to the government of the State," is in operation so far as complainant's rights and remedies are concerned. That the tax wherewith to pay complainant's judgment having been levied before the passage of said act, it is the duty of the defendant, Geo. B. Fleece, to collect said tax on all the taxable property in said city of Memphis, in accordance with the ordinance Exhibit B and the laws in force
136 at the passage of said ordinance, and it is the duty of defendant, J. C. Neely, to receipt to said Fleece for such amounts as he has or may hereafter collect on account of aforesaid 3 cent judgment tax, and to hold the same subject to the warrant of the said defendant, D. F. Goodyear, countersigned by defendant, James A. Newsom, whose duty complainant submits is to give it or its attorneys of record warrants properly signed and countersigned on the said J. C. Neely for such collections as may be in his hands from time to time until complainant's judgment is fully paid off and discharged.

Complainant is advised that the said defendants, Goodyear, Newsom, and Neely, are but trustees for the creditors of said city of Memphis, who are under the law entitled to have paid over to them the specific fund appropriated by the ordinance of Nov. 24, 187 , which said
137 ordinance is predicated upon sec. 64 of the act of 1875, LIX.

Complainant is not advised as to whether said trustees are willing act in the discharge of such duty. But it is advised that in the event of their refusal so to act this honorable court will by proper order direct said Fleece to pay over funds arrising from collections on account of the

aforesaid 3 cent judgment tax to a commissioner appointed by this court, until complainant's judgment is satisfied and discharged.

Complainant is further advised and charges that the provision in section 14 of said act, entitled "An act to establish tax districts in the State, and to provide the means of local government for the same," vesting in the State of Tennessee all indebtedness for taxes due to the city of Memphis, embarras'es, hinders, and delays complainant in
138 the collection of its debt and deprives him of any effectual remedy upon the same, and is but a device to destroy the rights and remedies of complainant; is an alteration to the prejudice of complainant of the law as it existed when the contract of complainant with the city of Memphis was entered into, which law was a part of complainant's contract, and for these reasons is, in so far as it affects complainant's rights and the means of enforcing the same, wholly inoperative, unconstitutional, and void.

Complainant charges that the rights to have a tax levied wherewith to pay its judgment was a part of and entered into the said contract made with the city of Memphis; that the only effect of chapter LIX of act of 1875 was to limit the amount of tax to be collected. This act, though unconstitutional so far as complainant is concerned as a
139 restriction upon his right and remedies not contemplated by the law in force when and where said contract was made, is not complained of unless the amount already levied, collected and to be collected is insufficient to pay complainant's debt under the act and ordinance referred to; the taxes levied for the payment of judgments was set apart and appropriated to the payment of complainant as before stated. By sec. 14 of the act creating "taxing districts" the fund so appropriated is directed or sought to be directed, and the law which existed whereby complainant could enforce the collection of its debt and the city of Memphis discharge and pay the same, is sought to be repealed and abrogated. Complainant submits that this act impairs the obligation of its contract, and is to that extent unconstitutional and void.

140 To the end, therefore, that said defendants may, if they can, show why complainants should not have the relief herein prayed for, and that said defendants may answer the premises, and that complainant, as a creditor by judgment recovered in 1878, said judgment not being upon bonds or coupons against the city of Memphis and all others, if any there should be, who are such judgment creditors, who may become parties to this bill, may be decreed to be entitled to receive all sums that are now or may hereafter come into the hands of defendant Geo. B. Fleece as trustee of the county of Shelby and State of Tennessee, and as such trustee collector of all taxes due to the city of Memphis for the year 1878 from the aforesaid 3 cent tax levied on all the taxable property in the said city of Memphis by ordinance of Nov. 29, 1878, wherewith and whereby to pay off and discharge
141 said judgments, and that defendants, James A. Newsom, D. F. Goodyear, and J. C. Neeley, may by this hon. court be declared trustees for the benefit of such creditors as own or hold judgments of 1878 against said city, other than judgments upon bonds or coupons of said city, and may be in conformity with the ordinance of said city required to receive and pay over to complainants and such creditors as own or have such judgments, the funds which shall be paid over to the defendant, Neeley, by the defendant, Fleece, trustee as aforesaid, and which are now or may hereafter come into the possession of said Fleece on account of said 3-cent judgment-tax, or in the event

that your honors may be of the opinion that said Neely, Newsom, and Goodyear cannot be compelled to act in their respective capacities and carry out the trust heretofore imposed upon them by law and ordinance as aforesaid, then that your honors may appoint some suitable person to collect from the said Fleece a sufficient amount of said 3-cent judgment-tax to pay off and discharge complainants' judgment and the judgments of any of the same character rendered against said city for the same year.

And if in aught your orators have mistaken their remedy, then they pray for all such other and further relief, general and special, as the circumstances may require and to your honors may seem meet and proper.

May it please your honors to grant unto plaintiff a writ of injunction issuing out of and under the seal of your honorable court to be directed to defendant, Geo. B. Fleece, to restrain him from paying over to any person or corporation, or the agent of any person or corporation, other than defendant, J. C. Neeley, or a commissioner appointed by this court under this proceeding, any sum of money which he has collected or may collect on account of the aforesaid 3-cent judgment-tax for 1878, and a like writ against defendant, J. C. Neeley, to restrain him from paying over to any person or corporation, or the agent of any person or corporation other than a commissioner appointed by this court in this proceeding, any fund which may be by said defendant, Fleece, paid to him on account of aforesaid 3 cent judgment-tax for 1878. That he may be decreed to hold said funds subject to the orders of this court herein. May writs of subpœna issue directed to Geo. B. Fleece, county trustee, D. F. Goodyear, James A. Newsom, commanding them and each of them to be and appear before this honorable court at the next rule day thereof, then and there to answer the premises.

And as in duty bound your orators will ever pray.

By IRVING HALSEY &
TAYLOR & CARROLL,
Sol's for Compl't.

EXHIBIT C.

EXECUTIVE DEPARTMENT,
Nashville, Tenn., January 31st, 1879.

Albert S. Marks, governor of Tennessee, to all who shall see these presents, greeting:

Whereas an act has passed the general assembly of the State of Tennessee, of date the 29th day of January, 1879, entitled "An act to repeal the charter of certain municipal corporations, and to remand the territory and inhabitants thereof to the government of the State," and it is made the duty of the governor of the State by said act to ascertain and declare by proclamation to what corporations said act applies:

Now therefore, I, Albert S. Marks, governor of the State of Tennessee, do hereby make proclamation that I have ascertained and do hereby declare that the provisions of said act are applicable to the city of Memphis, in the county of Shelby, alone, that being the only municipal corporation within this State having 35,000 inhabitants or over at the date of the passage of said act.

In testimony whereof I have hereunto set my hand and official signa-

ture and have caused the great seal of the State to be affixed, at the department in Nashville, this 31st day of January, 1879.

ALBERT S. MARKS,
146 *Governor of Tennessee.*

CHAS. N. GIBBS,
Sec'y State.

I, C. N. Gibbs, secretary of state of the State of Tennessee, do certify that the foregoing is a copy of a proclamation by the governor, the original of which is now of record in my office. In testimony whereof I have hereunto subscribed my official signature, and by order of the governor affixed the great seal of the State of Tennessee at the department in the city of Nashville this 31st day of January, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

(Endorsed as follows:) No. 324. Circuit court of the United States, western district of Tennessee. Ahrens M'f'g Company vs. Geo. B. Fleece et als. Filed 3d Feb., 1879. Bell W. Etheridge, cl'k.

147 Know all men by these presents, that we, Ahrens Manufacturing Co. & Irving Halsey, and held and firmly bound unto said defendant in the sum of two hundred and fifty dollars; but to be void on condition that the said defendants do pay and satisfy all costs that may accrue in that behalf in the prosecution of the said suit this day commenced by the said plaintiff in the circuit court of the United States for the western district of Tennessee, at said against the said defendant; and also on failure of the said plaintiff to prosecute the said suit with effect; and also on failure of the defendants, if convicted, to pay said costs.

Witness our hands and seals this 3rd day of February, A. D. 1879.

AHRENS MANUFACTURING CO., [SEAL.]
Per IRVING HALSEY, *Sol.* [SEAL.]
IRVING HALSEY. [SEAL.]

Approved and acknowledged before me the 3d day of February, A. D. 1879.

BELL W. ETHERIDGE,
Clerk.

148 (Endorsed as follows:) No. 324. Ahrens Manufacturing Co. vs. G. B. Fleece et als. Cost bond. Filed 3rd day of February, A. D. 1879. Bell W. Etheridge, clerk. H. E. Andrews, D. C.

149 The President of the United States of America to the marshal of the western district of Tennessee, greeting:

You are hereby commanded to summon George B. Fleece, D. F. Goodyear, J. C. Neeley, and James A. Newsom, citizens of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States in the sixth circuit for the western district of Tennessee, at Memphis, in said district, on the first Monday in March next, and then and there to plead, answer, or demur to the bill filed in the office of the clerk of the said court on the 3d day of February, 1879, against said defendant by the Ahrens Manufacturing Company. Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at said Memphis, this 8th day of February, A. D. 1879, and the 103 of American Independence.

BELL W. ETHERIDGE,
Clerk.

MEMORANDUM.—The defendants George B. Fleece, D. F. Goodyear, J. C. Neeley, and J. A. Newsom, are required to enter their appearances in this suit in the office of the clerk of the circuit court, at Mem-
150 phis, on or before the day on which the subpœna is returnable, or the allegations of the bill will be taken for confessed against said defendant and judgment rendered accordingly.

BELL W. ETHERIDGE,
Clerk.

(Endorsed as follows:) No. 324. Circuit court of the United States, western district of Tennessee. Ahrens Manufacturing Co. vs. Geo. B. Fleece et als. Summons. Returned 13th day of Feb., A. D. 1879. Bell W. Etheridge, cl'k. Halsey & Carroll, attorneys.

Att'ys direct that service of this summons be made by reading.
GARDNER.

I received this writ at Memphis, at 5.30 p. m., on 8th day February, 1879, and on tenth day February, 1879, I made known the contents of this summons by reading same to the within named as follows: To D.
F. Goodyear @ 8.35 a. m.; to Jas. C. Neely @ 8.50 a. m.; to
151 Geo. B. Fleece @ 9.34 a. m., and at same time delivered into hands of said Geo. B. Fleece a true copy of the bill in this case, and to Jas. A. Newsom @ 10.52.

M. T. WILLIAMSON,
U. S. Marshal W. D. Tenn.

4 serv. sum., 8.00; 1 serv. bill, 2.00; 3 miles, 0.18—$10.18.

152 In the circuit court of the United States for the western district of Tennessee. No. 326. In equity.

To the judges, &c.:

Tallmadge E. Brown, who is a citizen of the State of Iowa, brings this his bill for relief against the city of Memphis, a municipal corporation of the State of Tennessee, and a citizen thereof, John R. Flippin, the former mayor of the said city, Marcus Jones, the president of the board of aldermen of the said city, D. F. Goodyear, the chairman of the common council of the said city, James C. Neely, former city treasurer of the said city, the German National Bank, a national bank located at
153 Memphis, the First National Bank, a national bank located at Memphis, the State National Bank, a national bank located at Memphis, Joseph Uhl, clerk of the circuit court of Shelby County, George B. Fleece, county trustee of Shelby County, Benjamin F. Coleman and James W. Moores, all citizens and residents of Shelby County; and thereupon states and shows—

154 The plaintiff, on the 19th day of March, A. D. 1872, in a suit then pending, recovered in court here, of the defendant, the city of Memphis, a decree for the sum of four hundred and eighty-eight thousand nine hundred and ninety-three dollars ($488,993), with the costs to be taxed by the clerk, to bear interest at the rate of six per centum per

annum, and fourteen hundred and twenty dollars, the costs of the master therein, and that execution should issue for the enforcement of the said decree as upon a judgment at law.

From the said decree an appeal was taken by the city of Memphis to the Supreme Court of the United States, when, on the 6th day of April, A. D. 1874, the same was reversed, with costs, and the cause was
155 remanded to this court, with directions to enter a decree in conformity with the opinion of the said court of the said date.

The city of Memphis did not execute the appeal bond required in order that the appeal might operate as a supersedeas of the said decree, and so, on the 5th day of June, A. D. 1873, in a proceeding then pending herein for the purpose, a judgment was pronounced that a peremptory writ of mandamus issue commanding the said city, by its proper corporate officers, with all convenient speed, and before the first Monday of September, 1873, to levy a tax sufficient to pay five hundred and fourteen thousand nine hundred and nine dollars, being the debt afore-
156 said, with interest thereon at 6 per cent. per annum since the 7th February, A. D. 1873, and the costs of the suit, which tax should be in addition to all other taxes levied by the said city other than to pay the said debt, and to collect such tax in the lawful money of the United States at the time and in the manner it collected the other taxes levied by it annually, and, in levying such tax, to levy annually a rate on the assessed property in the said city that should produce not less than one hundred and fifty thousand dollars, which sum, at least, should be levied, collected, and paid over to the plaintiff annually, until the whole debt, with interest thereon and costs, should have been paid. And such
157 tax was ordered to be paid over to the plaintiff without the further order of the court, and his receipt therefor should be a sufficient acquittance to the officer paying the same.

The city of Memphis also sued out a writ of error to the said judgment, but not giving the bond required in order that such writ of error should operate as a supersedeas, it was obliged to and did proceed to assess, levy, and collect, as required by the peremptory writ of mandamus issued under the said judgment, a tax of seventy cents on the one hundred dollars of property assessed by it for taxation for the year 1873, and a tax of thirty cents on the one hundred dollars of property as assessed for taxation for the year 1874, for the purpose of pay-
158 ing the said decree, as required by the said judgment.

Before the decree of 19th day of March, 1872, was reversed by the Supreme Court of the United States as aforesaid, a large amount of the taxes so levied was collected, and afterwards and before the decree of the 16th March, 1875, to be hereinafter mentioned was rendered, a further large amount of such taxes so levied was collected, and for the sums paid over to him, as commanded by the writ of mandamus issued under the judgment of the 5th June, 1873, the plaintiff gave the city of Memphis credit on the sum decreed him by the decree aforesaid of the 19th March, 1872, as modified by the judgment of the Supreme Court of the United States of the 6th April, 1874, before referred to.

159 On the 16th March, 1875, the mandate of the Supreme Court of the United States, reversing the said decree of the 19th March, 1872, having previously been filed in court here, and the parties being in court here by their respective solicitors, the cause came on for final decree, and it appearing that the Supreme Court of the United States had decreed a reduction of the amount of the said decree of the 19th March, 1872, by the sum of one hundred and twenty-four thousand eight hun-

dred and eight dollars ($124,308), and that the city of Memphis had, since the rendition of the said decree, paid to the plaintiff thereon the sum of one hundred and thirty thousand two hundred and ninety-two dollars and sixty-nine cents ($130,292.69) in divers partial pay-
160 ments, it was decreed that the plaintiff recover from the city of Memphis the sum of two hundred and ninety-two thousand one hundred and thirty-three dollars and forty seven cents ($292,133.47), being the balance due of the amount of the decree aforesaid of the 19th March, 1872, after deducting the said two above mentioned sums, together with the costs of the suit to be taxed and six per cent. per annum int rest till paid, and that the city of Memphis forthwith pay the same to the plaintiff or into court for him, and also, that execution therefor forthwith issue.

Subsequently, by agreement of parties, the writ of error so sued out by the city of Memphis to the Supreme Court of the United States
161 to reverse the said judgment of the 5th day of June, 1873, so awarding the said peremptory writ of mandamus, requiring the levy and collection of the said tax for the purpose aforesaid, was dismissed, and thereby the said judgment and the writ issued thereon, and the assessments and levies of the taxes thereunder, were left and have since continued in full force, as they yet are.

There are large balances, the precise amount not being known to the plaintiff and he not having the means of ascertaining the same, remaining uncollected of the said taxes so levied for the payment of the debt so due to the plaintiff, and the tax books whereon they are charged and appear are, as the plaintiff is informed and believes, in the pos-
162 session or under the control of the defendant, James W. Moores, as will be stated more fully hereafter: and, as he is further informed and believes and charges, a large part of the said balances are collectible, and can be collected and applied to plaintiff's said debt, if proper efforts in that behalf are made.

On the 30th day of March, A. D. 1875, in a suit then pending in court here, it was adjudged that the city of Memphis proceed each year for the then ensuing three years, to wit, 1875, 1876 and 1877, respectively, at the same time and in the same manner that other city taxes were assessed, and levied and collected, to assess, and levy and collect upon all the property within the city taxable by law, a tax in addition
163 to all other taxes allowed by law, payable in the lawful money of the United States of America, sufficient in amount after making due allowance for all delinquencies, insolvencies and defaults, to realize one hundred and twenty five thousand dollars ($125,000.00) each year, for the years 1875 and 1876 respectively, and so much of the said sum for the remaining year, to wit, 1877, as might be required or necessary to pay and satisfy the balance of the said decree, including costs and interest not satisfied by the taxes collected and paid over during the two preceding years, and to pay over the same as fast as, and from time to time as the same might be collected to the plaintiff, until the whole amount of the said decree of the 16th day of March, A. D. 1875,
164 including the costs of the suit and the interest that had accrued or might accrue, should be paid or discharged; and that a peremptory writ of mandamus issue each year during the said three years, in accordance with the foregoing judgment to be served on the city of Memphis.

On a writ of error afterwards sued out by the city of Memphis, the said judgment was afterwards in all things affirmed by the Supreme Court of the United States, and yet remains in full force and effect.

A peremptory writ of mandamus has heretofore been issued each year for the said three years, to wit, 1875, 1876 and 1877, in pursuance of the said judgment; and each writ has been duly served on the
165 said city, and the said city has, in each instance, made a return to the said writs, showing what it claimed was a compliance with the commands and requirements thereof.

In obedience to the said judgment and the said writs respectively, the said city of Memphis did proceed to assess, levy and collect a tax for each of the said three years respectively, for the purpose of paying the said debt so due the plaintiff, as it was required to do.

For the year 1875, it levied a tax at the rate of fifty-four cents on the one hundred dollars of taxable property as assessed for taxation for the said year.

For the year 1876, it levied a tax at the rate of sixty cents on the
166 hundred dollars of taxable property as assessed for taxation for the said year.

And for the year 1877 it levied a tax at the rate of cents on the one hundred dollars of taxable property as assessed for taxation for the said year.

A considerable part of the taxes so levied for the said three years respectively has been collected, and a portion of the sums so collected has been paid to the plaintiff towards the satisfaction of his said debt, and the plaintiff has given the city of Memphis credit for all that has been so paid him. There are large balances, the precise amounts not being known to the plaintiff, and he not having the means of ascertaining the same remaining uncollected of the said taxes so levied for the said three years respectively.

167 An official statement made by the city comptroller to the mayor on the 1st July, 1878, showed the amount of the taxes levied to pay the debt aforesaid of the plaintiff, then unpaid, to be three hundred and sixty-seven thousand eight hundred and fifty-nine dollars and sixty-eight cents ($367,859.68). Of this sum the said statement showed that the sum of three hundred and ten thousand six hundred and sixty-one dollars and twenty-four cents ($310,661.24) had been levied prior to the year 1877, and that the sum of fifty-seven thousand one hundred and ninety eight dollars and forty-four cents ($57,198.44) had been levied for the year 1877. Whether these figures are correct or not the plaintiff does not certainly know, but he believes they are approximately correct.

168 Since the said statement was made some small amounts of the said taxes have been collected, but just how much the plaintiff is unable to state.

In and by the said official statement to the mayor, the city comptroller showed that on the said 1st July, 1878, there was due the plaintiff on his decree of the 16th day of March, 1875, not including interest, the sum of one hundred and two thousand one hundred and twenty-two dollars and ninety-three cents ($102,122.93); some small payments have been made since, but exactly how much has been paid the plaintiff cannot now state accurately, as the city comptroller has kept the account, and has his receipts, nor can the plaintiff certainly admit that the figures given by the comptroller as of the said 1st July, 1878,
169 are correct, but he believes they are tolerably nearly correct.

The plaintiff avers the balance due him on his said decree to be in the neighborhood of one hundred and fifty thousand dollars ($150,000.00), including interest, but for accuracy he refers to the ac-

count as kept by the city comptroller, and supported by his vouchers when produced.

The tax-books whereon the said taxes for the said years respectively are charged and appear, are, as the plaintiff is informed and believes and avers, in the possession or under the control of the defendant, James W. Moores, as will be stated more fully further on. And he is further informed and believes and avers that a large part of the said taxes so remaining unpaid for the said three years respectively
170 are collectible, and can and ought to be collected and applied to the payment of the balance due the plaintiff as aforesaid.

The said city of Memphis has not for years had any property subject to execution at law, nor any means of paying or providing for the payment of the said debt except by the levy of taxes as provided by law.

Very recently, and for the avowed purpose of enabling the city of Memphis to repudiate and avoid the payment of its just debts, including the debt aforesaid due the plaintiff, the legislature of the State of Tennessee has passed an act repealing the several acts having reference to the city of Memphis, and destroying so far as it could its corporate existence and abolishing all its offices.

171 Since the passage of the said act of the legislature, the city of Memphis has virtually ceased to exist, its officers have ceased or refused to perform their functions, and there has been virtually no organized municipal government within the former city limits.

No one has been or is collecting the taxes already assessed and due and remaining unpaid, either those levied for the particular benefit of the plaintiff, or those levied for other special or general purposes.

The legislature of the State of Tennessee, in addition to the act repealing the several acts having reference to the city of Memphis, has passed another act whereby it has attempted to vest the assets of the city of Memphis, including the taxes heretofore levied by it for
172 the payment of the decree aforesaid in favor of the plaintiff, and the other taxes due it, in the State of Tennessee.

The plaintiff is advised and believes that the said last-mentioned act is unconstitutional and void.

Whether the act first mentioned is valid or not the plaintiff submits to the decision of the court. But practically he is as much injured in the one event as in the other, since, as before stated, the corporate existence of the city of Memphis has practically ceased, its officers have vacated, or have refused to perform the functions of their respective offices, and the plaintiff has no way without the aid and interposi-
173 tion of this honorable court, by which he can enforce the collection of the balance aforesaid of his said decree, or can have the taxes already levied and remaining uncollected collected and applied to the purpose.

All the tax-books of the city of Memphis, except those for the year 1878, are now in the possession or under the control of the defendant, James W. Moores, who was the back tax collector of the city of Memphis prior to the abolition aforesaid of its corporate existence.

The said Moores, as the plaintiff is informed and believes and charges, has in his hands, collected by him as such back tax collector, a considerable sum of money, derived from the taxes levied specially and exclusively for the payment of the plaintiff's debt aforesaid, and such
174 sum he is ready and willing, as the plaintiff believes and avers, to pay to him on account of his said decree should the court be of opinion it is proper for him to do so.

And the defendant, The German National Bank, as the depository of

the defendant, James C. Neely, who was city treasurer of the city of Memphis, has in its possession a considerable sum derived from the taxes levied specially for the payment of the decree aforesaid in favor of the plaintiff, which it also is ready to pay to the plaintiff if it is proper for it to do so.

The defendant, George B. Fleece, as county trustee of Shelby County, has in his hands the tax books of the city of Memphis for the year 1878, and is proceeding to collect the taxes charged thereon, but
175 is not advised, as the plaintiff is informed and believes, as to the disposition he should make of the same, and is not paying over the sums he collects, but is holding the same under his own control.

The defendant, John R. Flippin, as late mayor of the city of Memphis, just prior to resigning his office, which he did about the last of January, 1879, without authority of law, as the plaintiff is informed and believes, withdrew a large amount of the funds in his hands of the said Neely, as city treasurer, derived from the special taxes levied as aforesaid for the payment of the decree in favor of the plaintiff. Most, if not all, the said sums the said Flippin paid to the defendant,
176 Benjamin F. Coleman, on some pretended claim set up by him, but which claim, as the plaintiff believes and avers, had no just foundation.

The plaintiff believes and submits that both the said Flippin and the said Coleman are liable to him for the payment of the said sums.

On the 31st January, 1879, the plaintiff caused an execution to issue on the decree aforesaid in his favor of the 16th March, 1875, and to be placed in the hands of the marshal. The city of Memphis having no property subject to seizure under the said execution, the marshal on the same day levied the same by garnishment on the defendants, the German National Bank, the State National Bank, the First National Bank, Geo. B. Fleece, and James C. Neely, and on the next day
177 on the defendant, John R. Flippin.

As the plaintiff is informed and believes and charges, each of the said defendants has possession or control of assets or property of the city of Memphis applicable to the payment of its debts.

The defendant, Joseph Uhl, is the clerk of the circuit court of Shelby County, and as such he has the collection of the various taxes which have been levied on real estate by the city of Memphis, and which real estate has been condemned for the payment of such taxes; he is from time to time receiving such taxes, including the taxes aforesaid, levied specially for the benefit of the plaintiff. What amount the said
178 Uhl has on hand now the plaintiff does not know, and cannot state, and he prays the said Uhl may set forth and discover.

The taxes levied specially for the plaintiff as aforesaid are liens on the property on which the same have been levied, and particularly on the real estate whereon such taxes are charged.

And the plaintiff is advised he has also a lien on the general assets and property of every kind of the said city of Memphis, for the payment of the balance due him as aforesaid, and a right to have such balance paid out of such property, and to have such assets and property marshalled and administered through the agency of the court.

179 After the taxes specially as aforesaid for the payment of the plaintiff's said debt have been exhausted, the plaintiff reserves the right to enforce his rights against the said general assets and property and to pray such relief in respect thereto as he may be advised he is entitled to.

In consideration of the premises the plaintiff prays that the parties

named as such in the caption may be made defendants and may be brought in by proper process and required to answer this bill; that a receiver may at once be appointed with all the powers legitimately belonging to collectors of taxes in the State of Tennessee, and directed to collect all the taxes aforesaid levied for the payment of the said
180 debt so due the plaintiff, either by distress, or by sale, or by suit, or otherwise, as may be most expeditious and effective; that he may pay over to the plaintiff from time to time, as received, the sums so collected until the plaintiff's said debt shall be fully paid, and shall hold or dispose of the residue as may be ordered by the court; and that the plaintiff may have all other just, proper, and necessary relief.

As to the funds on hand collected out of the taxes so levied specially for the payment of the debt aforesaid of the plaintiff and now in the possession of the said Moores, Neely, the German National Bank, the said Uhl and the said Flippin, respectively, and any other of the
181 said parties who may have any part of such special fund, the plaintiff prays they may be ordered forthwith to pay the same to him to be applied on his said debt.

WM. M. RANDOLPH,
Sol. for Pl'ff.

I, William M. Randolph, solicitor for the plaintiff, who is absent from and resides out of the State of Tennessee, do state on oath that the allegations of fact contained in the foregoing bill are true to the best of my knowledge, information and belief.

WM. M. RANDOLPH.

Subscribed and sworn to before me this 8th day of February, A. D. 1879.

H. E. ANDREWS, *Clk.*

182 (Endorsed as follows:) No. 326. Circuit court of the United States, western district of Tennessee. T. E. Brown vs. City of Memphis et als. Bill. Filed Feb. 7th, 1879. Bell W. Etheridge, clerk. H. E. Andrews, D. C.

183 The President of the United States of America to the marshal of the western district of Tennessee, greeting:

You are hereby commanded to summon the City of Memphis, John R. Flippin, former mayor of the said city, Marcus Jones, president of the board of aldermen, D. F. Goodyear, chairman of the common council, James C. Neeley, former city treasurer, The German National Bank, The State National Bank, The First National Bank, Joseph Uhl, George B. Fleece, Benjamin F. Coleman, and James W. Moores, all citizens of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States, in the sixth circuit of the western district of Tennessee, at Memphis, in said district, on the first Monday in March next, and then and there to plead, answer, or demur to the bill filed in the office of the clerk of the said court on the 7th day of February, 1879, against said defendants, by Tallmadge E. Brown, who is a citizen of the State of Iowa.

Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at said Memphis, this 7th day of February, A. D. 1879, and the 103 of American Independence.

(SEAL OF THE U. S. CIRCUIT COURT.)

BELL W. ETHERIDGE,
Clerk.

184 MEMORANDUM.—The defendants are required to enter their appearance in this suit, in the office of the clerk of the circuit court, at Memphis, on or before the day on which the subpœna is returnable, or the allegations of the bill will be taken for confessed against said defendant, and judgment rendered accordingly.

BELL W. ETHERIDGE, *Clerk.*

(Endorsed as follows:) No. 326. Circuit court of the United States, western district of Tennessee. T. E. Brown vs. City of Memphis et als. Returned and filed 10th day of Feb., A. D. 1879. Bell W. Etheridge, clerk.

At Memphis, Tenn., and on the eighth day of February, 1879, I made known the contents of this summons by reading the same personally to the within named, as follows: Joseph Ulil, at 2.30 p. m.; C.
185 W. Heiskell, as city attorney of the city of Memphis, @ 2.32 p. m.; D. F. Goodyear, as chairman of the common council, @ 2.38 p. m.; John R. Flippin, as former mayor of the said city, @ 2.45 p. m.; J. A. Hayes, as cashier of the State National Bank, @ 2.50 p. m.; M. Griffin, as cashier of the German National Bank, @ 2.52 p. m.; W. W. Thacher, as cashier of the First National Bank, @ 2.55 p. m.; Marcus Jones, president of the board of aldermen, @ 3.02 p. m.; James C. Neely, former city treasurer, @ 3.12 p. m.; James W. Newsom, at 6.20 p. m.; Geo. B. Fleece, @ 3.39 p. m.

The within-named Benjamin F. Coleman not to be found in my district, it being alleged that he has departed for California.

M. T. WILLIAMSON,
U. S. Marshal W. Dist., Tenn.

11 serv., 22.00; 8 miles, 48; $22.48.

186 In the circuit court of the United States for the district of West Tennessee. No. 327. In equity.

To the honorable the judges of the said court:

The plaintiffs, Fairman Rogers, Elias D. Kennedy, Alfred Matthias, and Gustavus S. Benson, who are citizens of the State of Pennsylvania, James D. Eakin and Henry E. Eakin, and John Arnot, who are citizens of the Stat eof New York, Tallmadge E. Brown and Ira Cook, who are citizens of the State of Iowa, B. H. Wisdom and John S. Brannin, who are citizens of the State of Kentucky, James A. Loudon and John Wassell, who are citizens of the State of Arkansas, Patrick McNichol,
187 who is a citizen of the State of Ohio, Ashbel S. Kittredge, as administrator of the estate of Evans Rogers, deceased, who is a citizen of the State of California, Seaton Grantland, who is a citizen of the State of Georgia, Henry Fisher and Parks Fisher, who are partners, by the style of William Fisher and Sons, who are citizens of the State of Maryland, and Hopkins Loudon, who is a citizen of the State of Illinois, who sue, not only for and on behalf of themselves, but for and on behalf of the several persons mentioned in Exhibit B hereto, and whose debts severally are therein set out, and all other persons and corporations having debts against the said city of Memphis, who may desire to make themselves parties plaintiff herein, bring this their bill for
188 relief against The City of Memphis, a municipal corporation and a citizen of the State of Tennessee, John R. Flippin, late mayor of the said city, Marcus Jones, president of the board of Aldermen of the said city, D. F. Goodyear, chairman of the common council of the

said city, James C. Neely, late treasurer of the said city, James A. Newsom, late comptoller of the said city, James H. Humphreys, late city engineer of the said city, Michael McFadden, late chief of the fire department of the said city, W. A. McCloy, late city register of the said city, James W. Moores, late back tax collector of the said city, Joseph Uhl, clerk of the circuit court of Shelby County, George B. Fleece,
189 county trustee of Shelby County, the German National Bank, the State National Bank and the First National Bank, of Memphis, all national banks organized under the act of Congress, and located at Memphis, John F. Frank and D. T. Porter, W. W. Guy and John Overton, jr., styled the board of fire and police commissioners of the taxing district of Memphis, all of whom are citizens of the State of Tennessee, and reside in Shelby County, and against all other persons and corporations who have an interest in the subject matter of the suit and may make themselves parties thereto.

190 The plaintiffs respectfully state and show:

That they severally are creditors of the city of Memphis in the manner following:

On the 11th January, A. D. 1877, the plaintiff, Fairman Rogers, recovered in court here of the said city a judgment for the sum of $4,276.60, and the costs of the suit, which remains in full force.

On the 1st November, 1877, he recovered in court here of the said city another judgment for $3,252.64 and the costs of the suit, which judgment remains in full force. He also is the holder and owner of nine (9) bonds of the city of Memphis, each for $1,000, and each past due, and of fifty-eight coupons taken from bonds of the said city,
191 and each representing a part of the interest on bonds of the city, and each for $30.00, all past due, and on the said bonds and coupons he has a suit pending in this court against the said city.

James A. London, on the 22d June, 1876, recovered in court here a judgment against the said city of Memphis for $11,187.03 and the costs of the suit, which judgment remains in full force.

And on the same day he recovered another judgment in court here against the said city for $762.10, which judgment remains in full force; but is entitled to a credit for payments heretofore made thereon by the said city. The amount of the said payments the plaintiffs can-
192 not now state, but will ascertain the same on or before the hearing, or the defendants can state the amount thereof.

Alfred Matthias, on the 30th day of May, 1877, recovered in court here of the said city of Memphis a judgment for $1,965.60 and the costs of the suit, which judgment remains in force, but is entitled to a credit for payments heretofore made thereon by the said city. The amount of such payments the plaintiffs cannot now state, but they will ascertain and report the same on or before the hearing, or the defendants can do so.

And on the 30th day of May, 1878, he recovered against the said city another judgment in court here for $2,896.27 and the costs of the
193 suit, which judgment remains in full force. And he also is the holder and owner of bonds of the city of Memphis, known as the gold funding bonds, each for $1,000, not yet due, and of coupons for interest taken from bonds of the city, each for $30, and each past due. The said bonds and coupons have not been sued upon.

James D. Eakin and Henry E. Eakin, on the 18th day of December, 1877, recovered in court here of the city of Memphis a judgment for $5,333.25 and the costs of the suit, and the said judgment yet remains

in full force. They are also the owners and holders of bonds of the said city of Memphis, each for $1,000 not yet due, and
194 of coupons for interest taken from bonds of the city, each for $30 and each past due. No suit has yet been brought on such bonds or coupons.

John Arnot, jr., on the 18th December, 1877, recovered in court here of the said city of Memphis judgment for $7,027.03, including the costs of the suit, and such judgment remains in full force.

And on the 4th day of June, 1878, he recovered in court here of the city of Memphis a judgment for $2,996.93 and the costs of the suit, which judgment remains in full force.

On the 22d day of June, 1876, John Wassell recovered in court here of the city of Memphis judgment for $769.01 and the costs of the
195 suit, and the said judgment remains in full force, except that the city of Memphis has made payments thereon and is entitled to credit therefor. The amount of the said payments the plaintiff cannot now state, but will ascertain and report the same on or before the hearing, or the defendants can do so.

And on the 18th December, 1877, he recovered in court here a judgment for the sum of $1,246.96 and the costs of the suit, against the city of Memphis, and such judgment remains in full force.

And on the 8th day of December, 1877, he recovered in court here of the said city of Memphis a judgment for the sum of $17,575.29 and the costs of the suit, and the said judgment remains in full force.

196 And on the 30th day of May, 1878, he recovered in court here a judgment for $8,546.27 and the costs of the suit, and the said judgment remains in full force.

Each and all the said four last-mentioned judgments have been transferred to William M. Randolph, as appears of record.

On the 16th day of March, A. D. 1875, the plaintiff Tallmadge E. Brown recovered in court here of the said city of Memphis a decree for $292,133.47 and the costs of the suit; the said decree yet remains in full force, but divers payments have been made thereon, and the plaintiffs cannot now state the amount due thereon; but believes
197 it is about $150,000.00. They will ascertain and report the true amount on or before the hearing, or the defendants can do so.

The plaintiff Ira Cook, on the 30th day of May, 1878, in court here, recovered a judgment against the said city of Memphis for the sum of $12,831.36 and the costs of the said suit, and such judgment yet remains in full force. And he is the holder of four (4) bonds of the said city of Memphis, each for the sum of one thousand dollars, and each due, and of four hundred and eighty-three coupons of the said city taken from the bonds thereof, and representing a portion of the interest on such bonds, each past due, four hundred seventy-five (475) of these being for $30.00 each, and eight (9) for $15.00 each.
198 No suit has yet been brought on the said bonds or coupons.

The plaintiff B. H. Wisdom, on the 30th day of May, A. D. 1878, recovered in court here of the said city of Memphis a judgment for $32,797.50 and the costs of the suit, and such judgment remains in full force. And on the 3d day of June, A. D. 1878, he recovered in court here a further judgment against the said city for $11,716.02 and the costs of the suit, and the said judgment yet remains in full force.

The plaintiff Elias D. Kennedy recovered in court here, on the 4th day of June, A. D. 1874, a judgment against the said city of Memphis for the sum of $1,055.66 and the costs of the suit. The said
199 judgment remains in full force, but payments have been made

thereon. The plaintiff cannot state the amount of such payments now, but they will ascertain and report the same on or before the hearing, or the defendants can do so.

The plaintiff Patrick McNichol is the holder of fifteen bonds of the said city of Memphis, each for one thousand dollars, and each past due, $15,315.00. and of 606 coupons for interest, each for $30.00, and 11 coupons each for $15.00, all past due, and all taken from the bonds of the said city. A suit is now pending in this court undetermined by the said McNichol against the city of Memphis, on the said bonds and coupons.

200 The plaintiff Gustavus S. Benson is the owner and holder of $810.00. 27 coupons for interest, each for $30.00, of the said city of Memphis, taken from its bonds, and each past due. No judgment has been recovered for the amount of the said coupons, but the said city of Memphis, under the requirements of a judgment of a circuit court of Shelby County awarding a peremptory mandamus commanding it to do so, has levied a tax for the year 1878 on the taxable property within the city, for the payment of the said coupons, and the tax-books whereon such tax is charged are in the hands of the defendant George B. Fleece, the county trustee of Shelby County, whose duty it is by law to proceed to collect the same.

201 Ashbel S. Kittredge, as the administrator of the estate of Evans Rogers, deceased, on the 24th July, 1878, recovered in the chancery court of Shelby County a decree against the City of Memphis, for the sum of $2,015.00, and the costs of the suit. The said decree remains in full force. Certain described property was directed by the said decree to be sold for its satisfaction, but no such sale has yet taken place.

Henry Fisher and Parks Fisher, who are partners as Wm. Fisher & Sons, on the 28th day of June, A. D. 1876, recovered in court here of the city of Memphis a judgment for $766.92 and the costs of the suit, and such judgment remains in full force. But certain payments have

202 been made thereon. The plaintiffs cannot now state the amount of such payments. They will ascertain and report the same to the court on or before the hearing, or the plaintiffs can do so.

The plaintiffs James A. Loudon and Hopkins Loudon are jointly the owners and holders of eight bonds of the said city of Memphis, known as the gold-funding bonds, not yet due, each for the sum of one thousand dollars, on which no suits have yet been instituted.

The plaintiff Hopkins Loudon is also the holder of 17 coupons for in- $510.00. terest of the said city of Memphis, each for $30 00, and each past due, taken from the bonds of the said city, in which he has now a suit pending in this court against the said city.

203 On the 30th day of January, A. D. 1879, the plaintiff Hopkins Loudon recovered in court here of the city of Memphis the sum of $11,590.61 and the costs of the suit, but the same was ordered to be paid out of the fund set apart by the city of Memphis in its budget for the year 1876, for the purpose of making public improvements. The said judgment remains in full force and unpaid, and the plaintiff has pending in court here on the equity side a bill to enforce the collection thereof. To the said bill the plaintiffs here refer for more particularity and certainty.

The plaintiff, John S. Brannin, on the 29th day of December, 1878, recovered in court here of the said city of Memphis a judgment

204 for $11,691.40 and the costs of the suit, and such judgment yet remains in full force; and he is the owner and holder besides

of bonds of the said city of Memphis, each for one thousand dollars, not yet due, and of coupons for interest on such bonds, all past due, and each for $30.00, on which no suit has yet been commenced.

The plaintiff, Seaton Grantland, is the holder and owner of 44 coupons for interest, each for $30.00, each past due, and each taken from the bonds of the city, on which he now has a suit pending in this court not yet in judgment. $1,320.00

The plaintiffs further state and show that on the 31st day of January, A. D. 1879, the following of them respectively sued out executions on the judgments or decrees aforesaid in their favor, 205 and caused the same to be placed in the hands of the marshal of the United States for the district of West Tennessee, to wit: Fairman Rogers, Tallmadge E. Brown, William Fisher & Sons, John Wassell, James A. Loudon, Alfred Matthias, James D. and Henry E. Eakin, John Amot, jr., B. H. Wisdom, Ira Cook, and John S. Brannin. Not being able to find any property of the city of Memphis to seize under the said executions, the marshal levied each of them on or about the said day by serving garnishments under them on the following of the defendants, to wit: The German National Bank of Memphis, the State National Bank of Memphis, the First National Bank 206 of Memphis, George B. Fleece, James C. Neely, and John R. Flippin. The return day of the said executions and garnishments has not arrived, and none of the said garnishees has yet filed an answer to such garnishments, or has been examined in court thereunder.

For many years the said city of Memphis has not had any property or effects subject to levy under execution at law, nor any means of providing for or paying its debts, except by the levy and collection of taxes, as provided for the purpose, and the appropriation of the same to such payment.

Altogether disregarding their duties and obligations, the per- 207 sons who have had control of the government and affairs of the city of Memphis have virtually, since about the beginning of the year 1874, and professedly and openly since about the beginning of the year 1875, declined and refused voluntarily to pay any part of its past-due or periodically accruing debt, either principal or interest, and have refused, unless compelled to do so, to levy voluntarily any tax for the payment of any such debt. The course first pursued was to litigate the validity of almost every debt the city owed, including some whose obligation had been recognized for many years; then to put obstacles in the way of the collection of the taxes necessary for the payment of the debts. The plaintiffs and many other creditors resorted to this 208 court, both for judgments for their debts and for the necessary writs and process to compel the levy and collection of the taxes necessary to pay them. Other creditors resorted to the courts of the State of Tennessee for one or the other or both the said purposes. Very generally, if not universally, the plaintiffs and the other creditors obtained the judgments and the writs and process they claimed to be entitled to for the said purposes, as will more fully appear by reference to the records of this court and to the records of the courts of the State where such suits or proceedings have been had.

For the plaintiff T. E. Brown a judgment was pronounced in court here on the 30th March, 1875, awarding writs of mandamus com- 209 pelling the levy a tax each year for the years 1875, 1876, and 1877, and requiring the collection and payment over to him of a sum sufficient to satisfy his decree aforesaid. For certainty and par-

ticularity as to the said judgment and the writs thereon and the proceedings thereunder, the plaintiffs now here refer to the records of the court. The defendant The City of Memphis levied taxes each of the said years, and had them carried out on its tax-books for each year, professedly and avowedly for the payment of the said decree and for no other purpose. It had previously, for the years 1873 and 1874 respectively, in pursuance of a judgment of this court rendered on the 5th day of June, 1873, which yet remains in force, levied other taxes
210 professedly and avowedly for the payment of the debt due him on the first decree therefor, and for no other purpose, and had caused them to be carried out on its tax-books for each of the said years. The tax-collectors have collected portions of the taxes so charged on all the said tax-books, and have paid portions of such collections to the plaintiff T. E. Brown, on his said decree; but there still remains due him on the said decree a very large sum, the precise amount of which he cannot now state, but which approximates $150,000.00, and the amount of which he will ascertain and show at the proper time. According to the statement of the city's condition made to the mayor by the city comptroller on the 1st of July, 1878, which the plaintiffs believe to be
211 nearly correct, there then remained unpaid and due of the taxes so levied and charged the sum of $367,859.68. Some small collections may have been made since, but not any very large amount, and the balance yet remains due and to be collected. The plaintiff T. E. Brown claims a lien and preference and specific appropriation of the said balance of the said taxes to pay the said balance of the said decree, and has filed a bill in this court to enforce the same, to which he now here refers. And he does not by this bill waive any such lien or preference or specific appropriation in favor of his co-plaintiffs herein or any other creditors, but reserves and claims and insists on the same. He joins in this bill for the purpose of asserting his right as a creditor of the said city of Memphis to a portion of the general property or assets
212 of the said city, and to ask that the same may be applied to the payment of his said debt.

Some of the plaintiffs herein have had judgments in this court and some have had judgments in the circuit court of Shelby County requiring the city of Memphis to levy and collect and pay over to them as collected a specific tax, or more then one, for the purpose of paying the judgments they have respectively recovered as aforesaid, or the particular indebtedness to them of the city of Memphis which they hold, or then held, and such taxes have been levied in most instances, if not all, except for the year 1879, for which there have not yet been any levies of taxes by or for the city of Memphis. The said taxes have not
213 been levied for the plaintiffs or other creditors, separately or by name, but a general levy for all of a designated class, or for all included in a designated list, has been made, with the intention and understanding that the sums collected should and would be divided as collected pro rata amongst those interested and entitled. The tax thus levied has usually if not always been designated the "sundry mandamus tax."

A tax of the said description and under the said name was levied for the year 1875, another for the year 1876, another for the year 1877, and another for the year 1878. Such tax was levied on all the property taxable, including merchants' capital, which has heretofore been assessed separately from other property.

214 The plaintiffs will file with and as a part of this their bill, on or before the hearing, if required

(1.) A list showing first the names of the several persons, including others as well as themselves, for whom the said "sundry mandamus tax" was levied for the year 1875, and who are entitled to share therein; secondly, the amounts of the debts of the said persons respectively for the payment of which such tax was levied; and, thirdly, the amount yet remaining due and unpaid on each of such debts.

(2.) A like list for the year 1876.

(3.) A like list for the year 1877, and

(4.) A like list for the year 1878.

The said lists, if filed, will be numbered and marked as Exhibits 1, 2, 3, and 4, respectively. To the exhibits the plaintiffs here refer for certainty and particularity in reference to the *patteins* contained *in* therein.

215 According to the statement of the city's financial condition made on the 1st July, 1878, the balances due on the said sundry mandamus taxes, respectively, are as follows:

For the year 1875, $56,375.32.

For the year 1876, $36,385.52.

For year 1877, $90,814.61.

The plaintiffs have not the information necessary to enable them to state how much remains due on the said tax for the year 1878, nor are they sure the above figures are correct as to the said other years, but they believe they are substantially correct.

The plaintiffs respectively, and each for himself, claims and insists upon the lien, preference, and specific appropriation of the said

216 several taxes to the payment of the several debts for the payment of which they respectively were levied, to the exclusion of other debts and claims, and none of them waive, or are to be understood as waiving or yielding to any extent, or for any purpose, any such lien, preference, or specific appropriation.

The said city of Memphis, for several years past, perhaps for 1875, 1876, 1877 and 1878, respectively, has levied a tax of five cents on the hundred dollars of property taxable by the city for the purpose of paying judgments against it. The amount of such tax remaining due on the 1st July, 1878, according to the comptroller's said statement, since which but little if anything has been collected thereon, was $11,922.95.

To this amount the judgment tax for the year 1878 remaining un-

217 collected is to be added. The plaintiffs cannot now state such amount, as they have not the requisite information.

The plaintiffs are advised and submit that this judgment tax is for the benefit and ought to be distributed pro rata amongst all the judgment creditors of the said city of Memphis. But this question the plaintiffs submit to the court.

The plaintiffs further state and show that on the said 1st July, A. D. 1878, as appears by the said statement of the comptroller, the assessed taxes due the city of Memphis on sundry accounts, including all the years prior to 1878, except the sinking fund taxes for the years 1875 and 1877, amounted to $1,612,795.35, nominally more than enough,

218 if collected, to pay all the ascertained due debt of the said city.

No legal or sufficient excuse has been or can be given for the failure to collect much the larger portion of the said taxes so remaining unpaid; and such failure has resulted from the indisposition of the officers charged with the collection of such taxes to perform their duties, from the inefficiency and incompetency of those charged with the city's administration, and from a tacit combination of all the said officers and

the delinquent debtors and tax-payers of the city, to avoid, and if possible escape altogether the payment of the city debt.

Of the said balance of unpaid and due taxes so remaining on the said 1st July, 1878, a very small portion has since been collected.

219 The said balance is made up of the taxes already mentioned, except those for the year 1878, which are not included, and of the following:

Taxes for the payment of the interest on the city bonds levied prior to the year 1877, and remaining unpaid, $228,255.96.

Taxes levied for the year 1877, for the payment of the interest on what was known as the compromise bonds, $61,795.71.

The plaintiffs are advised and submit that the said taxes so levied for the payment of the interest on the city bonds so remaining unpaid and due, are by law to be appropriated first to the payment of such judgments or such debts as represent portions of such interest, to

220 the exclusion of other debts, and they here severally and respectively insist upon and claim such appropriation both for themselves and for others similarly situated, and do not waive or in any way yield or relinquish the same.

Many of the plaintiffs' judgments or debts represent such interest, as may be seen by the proceedings in the suits in which the judgments were recovered, or by the original evidences of indebtedness of the said city. To the said proceedings and evidences reference is here mad'.

Included in the said balance of unpaid taxes so due the city of Memphis on the 1st July, 1878, is the sum of $57,198.44, levied under the act of the legislature of the State of Tennessee of the 18-23 March, 1873, for

221 the purpose of reimbursing those who paid for the laying of the Nicholson and stone pavements in the city of Memphis in front of their property, the said taxes, as the plaintiffs are informed and believe, were levied for the year 1873. Some of the plaintiffs have judgments recovered on the debts, the said taxes were levied to pay, as will more fully appear by reference to the records of the suits in which recoveries were had.

The plaintiffs claim and insist that such taxes so levied ought first to be applied to the payment of the said judgments so recovered on the said debts and other similar debts, and they here severally for themselves ask and insist upon such appropriation, and do not waive, or relinquish, or to any extent yield the same.

222 In addition, in the said balance of taxes so due on the 1st July, 1878, is included the sum of $766,273.66, the balance of the general tax, or the tax levied for the purpose of defraying the ordinary expenses of the city government prior to the year 1878 on real and personal property remaining uncollected, levied prior to the said year on the capital of merchants, amounting to the sum of $36,009.97.

The plaintiffs are advised, and submit, that all the creditors equally are entitled to share in the proceeds of the said general tax so remaining uncollected, and that the same ought to be distributed pro rata among all such creditors, and that no one has a preference over the others in respect thereto.

223 There is also in the said balance of taxes so due on the said day a balance of taxes levied to create a sinking fund to retire the bonds of the city as they fell or fall due, amounting to the sum of $29,092.42, which said balance is of taxes levied prior to the year 1875.

And in addition to the said balance so remaining due on the 1st July, 1878, is the sum of $25,503.69, a balance remaining due and uncollected

of taxes levied for the years 1875 and 1877, respectively, for the purpose of creating a sinking fund to retire the said bonds.

The plaintiffs are advised that the said sinking-fund taxes are properly applicable to the payment of bonds that are due, or to judgments thereon, and that those of the plaintiffs and other creditors having
224 similar debts are entitled to a preference and priority of payment of such bonds and such judgments out of such taxes to the exclusion of other debts, and such claims of preference they here insist on and claim, and do not waive or relinquish.

There is also a balance of taxes included in the said general balance of July 1st, 1878, levied for the purpose of paying the bonds issued by the city of Memphis to the Mississippi River Railroad Company, and the interest thereon, for taxes levied prior to the year 1875, of $13,045.29; and a further balance, for the year 1876, of $6,752.08; and a balance of such tax levied for the year 1877, specially for the benefit of the defendant J. F. Frank, one of the holders of such bonds, amounting to the sum of $4.518.99.

225 The plaintiffs are advised and submit that the holders of the said bonds, and particularly the defendant J. F. Frank, have a right to have payment of their debts out of the proceeds of the said taxes in preference to other creditors, and they do not seek to disturb such priority.

The city of Memphis, in addition to the said balances of taxes, has other assets. They consist of real estate and personal property and debts due to it, a particular description of which will be filed herein on or before the hearing as a part hereof, if required, marked Exhibit A, and to which reference is here made.

There are also many debts due by the city of Memphis besides
226 those before enumerated, but the plaintiffs are not able to give a correct description of such debts, nor to name the person or persons to whom they are due or owing. It is intended and proposed that all such persons shall be made, or shall have the right to make themselves, parties to this suit, either as plaintiffs or as defendants, as may be most proper or they may prefer, and that they may have in this suit all the relief of every kind to which they are entitled as against the said city and all other persons.

The plaintiffs further state and show that the city of Memphis and its predecessor, the town of Memphis, has been a municipal corporation chartered by the State of Tennessee, as may be seen by its public acts, for more than fifty years. During all the said time it has had
227 the unquestioned power to contract and be contracted with, and to sue and be sued, and to perform and execute the powers and duties incident to municipal corporations, and certain specified special powers. All its debts, including those due the plaintiffs, have been lawfully contracted in pursuance of its general corporate powers, or of powers specifically granted to enable it to contract them.

It has had the benefit of the money or other consideration for which such debts were contracted. By means thereof it has constructed and maintained its streets, wharves, public landings, public squares, buildings of every description, and has carried on its municipal government. It has also aided thereby in the construction of various railroads lead-
228 ing to the city and other public improvements whereby the growth and wealth of the city have been greatly increased. All this is true not only of the debt now due but of that to grow due.

Very recently, on the 29th January, 1879, the legislature of the State of Tennessee passed an act, which was approved by the governor on

the 31st day of January, 1879, whereby it is declared that the charter of the defendant, The City of Memphis, is repealed; that the said city as a corporation and all its offices are abolished; that its former territory is resolved back into the body of the State; that all power of taxation in any form whatever is withdrawn and reserved to the legislature; that the public buildings, squares, promenades, wharfs,
229 streets, alleys, parks, fire-engines, hose and carriages, horses and wagons, engine-houses, engineer instruments, and all other property, real and personal, hitherto used by the said city of Memphis for municipal purposes, are thereby transferred to the custody and control of the State, to remain public property, as it has always been, for the uses to which said property has been hitherto applied; and that no person holding office under or by virtue of any of the repealed laws shall, from and after the passage of the act, exercise or attempt to exercise any of the powers or functions of said office. The act declared it should take effect from and after its passage. By another act, passed
230 and approved the same day as the one first referred to, the said legislature declared that "All indebtedness for taxes, or other-
Sec. 14. wise, whether in litigation or otherwise, due to the said city of Memphis, should vest in and become the property of the State of Tennessee, to be disposed of for the settlement of the debts of the said extinct municipality, as shall be hereafter provided by law," and "that the taxes heretofore assessed as privilege taxes, and set apart for the payment of the police and firemen, shall be paid out as collected under the provisions of the act to the said police and firemen."

Since the passage of the said two acts the officers of the city of Memphis, including the mayor and the members of the general council, and all others, have abandoned their positions, and have ceased
231 to perform their respective duties. Practically the said city has ceased to exist as a municipal corporation. No one assumes to represent or act for it, or claims to be charged with that duty. No one is collecting or attempting to collect its past due taxes, or receive the *the* moneys due it, or to control or have the right to control its property of any kind, unless the persons designated by the act last mentioned are doing or attempting to do so. Whether they are or not the plaintiffs do not know.

The tax books for the year 1878, whereon all the taxes assessed by and due to the city of Memphis are charged, are now in the hands of the defendant George B. Fleece, as county trustee and tax collector,
232 whose duty it is by law to collect the same. And as the plaintiffs suppose the said Fleece is making or is endeavoring to make collections thereof. The amount of the taxes so assessed and due is several hundred thousands of dollars, the precise amount not being known to the plaintiffs. But there is no one designated by law to whom he is required to pay over the collections he makes; and no one designated to make distribution of the sums he collects, after the same are collected, to or amongst those entitled thereto.

The tax-books of the city of Memphis, or those whereon its taxes are charged and appear, for the years prior to the year 1878, are, as the plaintiffs are informed and believe, in the possession or under the
233 control of the defendant, James W. Moores, who formerly was back-tax collector of the city of Memphis, and who also is in possession of the safes, desks, books of account, and other books and office furniture and appurtenances of the office of tax collector of the said city.

The defendant James A. Newsom was comptroller of the city of Mem-

phis, and is in possession or has control of the books, safes, records, office furniture, and appurtenances belonging to the said office.

The defendant W. A. McCloy was register of the city of Memphis, and as such he has in his possession or under his control the records, books, papers, office furniture, and appurtenances of the said office.

The defendant John R. Flippin was mayor of the city of Mem-
234 phis, and as such had or has possession or control of the property of every kind belonging to his said office, and of the records, books, papers, and other appurtenances belonging thereto.

The defendant James C. Neely was the treasurer of the city of Memphis, and as such has in his possession all the funds of every kind and money in the treasury of the city at the date of the passage of the said two acts of the legislature, and of all that have come thereto since. Such funds and money are on deposite to the credit of the said Neely such treasurer, as the plaintiffs are informed and believe, with the defendant, The German National Bank.

The plaintiffs pray that the said Neely and the said bank may
235 be required to set forth and show just what particular funds or money and the precise amount of each fund they or either of them have under their control.

The defendant James W. Moores, before mentioned, as the plaintiffs are informed and believe and charge, has on hand a considerable sum of money received by him as back-tax collector as aforesaid, not yet paid over. They pray he may be required to set forth and show just what he has on hand, and to pay over the same as the court may direct.

The said Fleece, as county trustee and tax collector as aforesaid, as the plaintiffs are informed and believe and aver, has on hand on de-
posite in the defendant, The First National Bank, or The State
236 National Bank, or in both of them, or elsewhere, a very large sum of money collected by him as such trustee or tax collector on account of the taxes due the city of Memphis for the year 1878. They pray he and the said banks each may be required to set forth and show just what they and each of them have on hand, and to pay over the same as the court may direct.

The defendant Joseph Uhl is the clerk of the circuit court of Shelby County, and as such he is authorized to receive the money to be paid for the redemption of the property heretofore sold for city taxes where the time for redemption has not yet expired. The list of the condemned
lands, and the return of the sales thereof, and the statement of
237 the taxes due thereon are in his custody as such clerk. The plaintiffs are informed, and believe, and aver that he has a considerable sum of money already on hand, received on account of such redemptions, and he will be receiving other moneys from time to time as such redemptions occur. The plaintiffs pray that he may be required to set forth and show what amount of moneys he now has on hand on the account aforesaid, and to pay over the same as the court may direct. Also, that he may be required to report his receipts to the receiver hereinafter to be appointed, and to pay over to him the sums received from time to time as he receives the same.

There are many lots and parcels of land within the city of Memphis
which have heretofore been sold for city taxes. Many of them
238 have been purchased by the city. In some instances deeds have been taken, and in others no deeds have been taken. The State of Tennessee has also purchased many lots or parcels of land for city taxes. In most instances the time for redeeming such lots or parcels of

land has not yet expired. In others, perhaps, such time has expired, and the title has become absolute. In all such cases, as the plaintiffs are informed, and believe, and aver, the city of Memphis is entitled to the lot or parcel of land itself, or else to the taxes due thereon, or to be paid for the redemption thereof.

The defendant Michael McFadden was chief of the fire department of the city of Memphis, and has possession of the horses, carriages,
239 engines, hose, and other property belonging to the fire department of the said city, and is in possession and occupation of the several engine-houses belonging to the said city.

The defendant James H. Humphreys has been acting as engineer of the city of Memphis, and has in his possession or under his control the horses, wagons, tools, and implements, and other property belonging to the engineer's department of the said city, and is in possession or has control of the stables used by the said department.

The plaintiffs are advised and believe that all the property hereinbefore mentioned belonging to the city of Memphis, and all its other property, not already mentioned, must be held liable for, and must be
240 appropriated to the payment of the debts it owes, and that they and the other creditors of the said city have the right to ask the aid of this court in having the same so applied.

The plaintiffs charge that the said two acts of the legislature of the State of Tennessee, before referred to, so far as they were intended, and so far as they have the effect to interfere with the collection by the plaintiffs, respectively, or the other creditors, of their several debts by due course of law, and so far as they were intended to, and so far as they have the effect to withdraw any part of the taxes due to the said city, or any part of the property belonging thereto, from the payment of the debts it owes, and so far as they attempt to
241 vest the said taxes or property, or any part thereof, in the State of Tennessee, or to transfer the same, or any part thereof, to Board of Fire and Police Commissioners of the so-called taxing district of Memphis, impair the obligation of the contracts between them severally and the city of Memphis, and are therefore in violation of the Constitution of the United States, and void.

The plaintiffs charge and submit that the said uncollected taxes and other property of the said city of Memphis are a trust fund for the payment of the debts the said city owes, and the city and its several officers having relinquished and ceased to perform their several duties in respect thereto, it has become and is the duty of this court to take
243 possession of and proceed to collect and administer and distribute the same according to the rights, interests, and equities of all and singular the parties having an interest.

The said acts of the legislature, and the course pursued by the officers of the city of Memphis in so abandoning its corporate or municipal organization, and in so refusing or failing to perform the duties of their respective offices, and in so relinquishing the trusts reposed in them in respect to the property and assets of the city, and the use and disposition thereof, all as aforesaid, have had the effect of depriving the plaintiffs of any adequate or efficient remedy at law for the collection of the debts due them as aforesaid, and have left them remediable only
243 in a court of chancery, where matters of such a nature are properly cognizable.

The plaintiff Hopkins London does not waive or relinquish to any extent or for any purpose the lien, preference, or priority he has, to have payment of his judgment aforesaid, of the 30th day of January,

1879, out of the special fund therein designated for its payment, but here claims and insists upon such right.

The plaintiffs are further advised and believe and submit, that not only have they a right to subject the assets and property aforesaid of the city of Memphis to the payment of their debts; but if the same are not sufficient for the payment thereof, they have the further right
244 to subject all the taxable property within the limits of the city of Memphis to the payment thereof, and to have the orders, decrees, and process of this court to the extent necessary to make such right available, and to enable them to obtain such payment.

In consideration of the premises, the plaintiffs pray that the parties named in the caption as such may be made defendants, and may be brought in by proper process, and required to answer this bill; that a receiver may at once be appointed by the court to take possession and control of all the assets and property of the city of Memphis, including the taxes due to it, and to hold, manage, and control the same under the direction of the court; that such receiver may at once collect
245 all the debts due the said city, and may be given all the powers and authority the court can confer to enable him to do so; that the proceeds of the property of the said city, and the taxes that may be collected, may, as fast the same are realized, be paid by the receiver to the plaintiffs and the other creditors of the city according to their rights, liens, and priorities respectively, to be declared and fixed by the court; that the court will give all proper directions, and make all necessary orders and decrees, to the end that the plaintiffs and the other creditors may obtain payment of the debts due them as aforesaid, and that the plaintiffs may have all other just, proper, and necessary relief.

WM. M. RANDOLPH,
For Pl'ffs.

246 I, Wm. M. Randolph, solicitor for the plaintiffs, do state on oath that the matters set forth in the foregoing bill are true to the best of my knowledge, information, and belief.

WM. M. RANDOLPH.

Subscribed and sworn to before me this 10th February, 1879.
BELL W. ETHERIDGE, *Clerk.*

Know all men by these presents that we, Fairman Rogers and the other plaintiffs in the foregoing bill, and Wm. M. Randolph as surety, are held and firmly bound unto said defendants, The City of Memphis & others, in the sum of two hundred and fifty dollars; but to be void on condition that the said plaintiffs do pay and satisfy all costs that may accrue in that behalf in the prosecution of the said suit this day commenced by the said plaintiff in the circuit court of the United States for the western district of Tennessee, at said Memphis, against the said defendant; and also on failure of the said plaintiff to prosecute the said suit with effect.

Witness our hands and seals this 10th day of Feb'y, A. D. 1879.

FAIRMAN ROGERS AND THE OTHER PLAINTIFFS NAMED ABOVE.,
By WM. M. RANDOLPH, *Att'y.* [SEAL.]
WM. M. RANDOLPH, *Surety.* [SEAL.]

Approved and acknowledged before me the 10 day of Feb., A. D. 1879.
BELL W. ETHERIDGE, *Clerk.*

247 (Endorsed as follows:) No. 327. Circuit court of the United States, western district of Tennessee. Fairman Rogers et als. vs. City of Memphis et als. Filed 10 Feb., 1879. Bell W. Etheridge, clerk.

248 The President of the United States of America to the marshal of the western district of Tennessee, greeting:

You are hereby commanded to summon the city of Memphis, a municipal corporation, and a citizen of the State of Tennessee, John R. Flippin, late mayor of the said city; Marcus Jones, president of the board of aldermen of the said city; D. F. Goodyear, chairman of the common council of the said city; James C. Neely, late treasurer of the said city; James A. Newsom, late comptroller of the said city; James H. Humphreys, late city engineer of the said city; Michael McFadden, late chief of the fire department of the said city; W. A. McCloy, late city register of the said city; James W. Moores, late back tax collector of the said city; Joseph Uhl, clerk of the circuit court of Shelby County; George B. Fleece, county trustee of Shelby County; the German
249 National Bank; the State National Bank, and the First National Bank of Memphis; all national banks organized under the act of Congress, and located at Memphis; John F. Frank and D. T. Porter, W. W. Guy and John Overton, jr., styled the board of fire and police commissioners of the taxing district of Memphis, all of whom are citizens of the State of Tennessee, and reside in Shelby County, and against all other persons and corporations who have an interest in the subject-matter of this suit, and may make themselves parties thereto, citizens of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States, in the sixth circuit for the western district of Tennessee, at Memphis, in said district, on the first Monday in April next, and then and there to plead, answer, or demur to the bill filed in the office of the clerk of the said court on the 10th day of Feb'y, 1879, against said defendant by Fairman Rogers et als.

250 Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and [the seal of said circuit court, at said Memphis, this 10th day of Feb'y, A. D. 1879, and the 103 of American Independence.

{ SEAL OF THE U. S. CIRCUIT COURT. } BELL W. ETHERIDGE, *Clerk.*

MEMORANDUM.—The defendants are required to enter their appearance in this suit in the office of the clerk of the circuit court, at Memphis, on or before the day on which the subpœna is returnable, or the allegations of the bill will be taken for confessed against said defendants and judgment rendered accordingly.

BELL W. ETHERIDGE, *Clerk.*

(Endorsed as follows:) No. 327. Circuit court of the United
251 States, western district of Tennessee. Fairman Rogers et als. vs. City of Memphis et als. Summons. Issued 10th day of Feb'y, 1879. Bell W. Etheridge, clerk. Returned and filed 26th day of Feb'y, A. D. 1879. Bell W. Etheridge, clerk. Randolph, att'y.

WESTERN DIST. OF TENN., *ss:*

I executed the summons in this case by personally reading and mak-

ing fully known the contents of said summons, on each of the defendants as therein named, as follows:

John R. Flippin, as late mayor, on 12th February, 1879; Marcus Jones, president of board of aldermen, on 12th Feb'y, 1879; D. F. Goodyear, chairman of common council, on 12th Feb'y, 1879; James C. Neely, late treasurer, on 12th Feb'y, 1879; James A. Newsom, late comptroller, on 12th Feb'y, 1879; Michael McFadden, late chief fire dep't, on
252 12th Feb'y, 1879; W. A. McCloy, late city register, on 12th Feb'y, 1879; James W. Moores, late back tax collector, on 12th Feb'y, 1879; Joseph Uhl, clerk Shelby Co. cir. court, on 12th Feb'y, 1879; George B. Fleece, county trustee, on 12th Feb'y, 1879; Henry E. Garth, president of the German National Bank, on 12th Feb'y, 1879; J. A. Hayes, jr., cashier of the State National Bank, on 12th Feb'y, 1879; W. W. Thacher, cashier of the First National Bank, on 12th Feb'y, 1879; John F. Frank, D. T. Porter, W. W. Guy, and Jno. Overton, jr., each on 12th day February, 1879; Jas. H. Humphreys, late city engineer, on 24th Feb'y, 1879.

M. T. WILLIAMSON,
U. S. Marshal W. D. T.

The within named, The city of Memphis, I am unable to serve, being unable to find any person representing the said city upon whom to effect service.
253

M. T. WILLIAMSON,
U. S. Marshal,
By A. J. GARDNER, *Dep.*

18 serv., 36.00; 8 miles, 48—$36.48.

254 In the circuit court of the United States for the district of West Tennessee.

TALLMADGE E. BROWN
vs.
THE CITY OF MEMPHIS AND OTHERS } No. 326. Eq.

The City of Memphis; John R. Flippin, former mayor; Marcus Jones, president of the board of aldermen; D. F. Goodyear, chairman of the common council; James C. Neeley, former city treasurer, and all others interested will take notice that on Monday, the 10th day of February, 1879, the plaintiff will apply to the above court, then in session at Memphis, for the appointment of a receiver, according to the prayer of the above-mentioned bill, to which reference is here made.

February 7th, 1879.

WM. M. RANDOLPH,
Sol. for Pl'ff.

255 (Endorsed as follows:) No. 326. Eq. T. E. Brown vs. The City of Memphis and others. Notice of motion for receiver.

At Memphis, Tenn., I executed this notice by serving true copy hereof personally on John R. Flippin, former mayor, at 7.20 p. m., Feb'y 7th, 1879; on The City of Memphis by copy on C. W. Heiskill, as city attorney, @ 7.30 p. m., on Feb'y 7th, 1879; on James C. Neely, former city treasurer, @ 8 p. m., Feb'y 7th, 1879.

M. T. WILLIAMSON,
U. S. Marshal,
By SAM. C. PAINE, *Deputy.*

And I executed this notice by serving true copy hereof personally on D. F. Goodyear, chairman of the common council, @ 5.15 p. m., on 7th Feb'y, 1879, and on Marcus Jones, president of the board of aldermen, at 9.30 a. m. on Feb'y 8th, 1879.

M. T. WILLIAMSON,
U. S. Marshal,
By J. W. RAMSEY, *Deputy.*

5 serv., 10.00; 3 miles, 18—$10.18.

256 In the circuit court of the United States for the district of West Tennessee. In equity.

HOPKINS LOUDON
vs. } No. 323.
THE CITY OF MEMPHIS & OTHERS.

The City of Memphis; John R. Flippen, former mayor; Marcus Jones, president of the board of aldermen; D. F. Goodyear, chairman of the common council; James C. Neely, former city treasurer, and all others interested will take notice that on Monday, the 10th day of February, 1879, the plaintiff will apply to the above court then in session at Memphis for the appointment of a receiver, according to the prayer of the above-mentioned bill, to which reference is here made.

February 7th, 1879.

WM. M. RANDOLPH,
Sol. for Pl'ff.

257 (Endorsed as follows:) No. 323. Eq. H. Loudon vs. City of Memphis and others. Notice of motion for a receiver.

At Memphis, Tenn., I executed this notice by serving true copy hereof personally on John R. Flippin, former mayor, @ 7.20 p. m., Feb'y 7th, 1879; on The City of Memphis, by copy on C. W. Heiskell, as city attorney, @ 7.30 p. m., Feb. 7th, 1879; on James C. Neely, former city treasurer, @ 8 p. m., Feb. 7th, 1879.

M. T. WILLIAMSON,
U. S. Marshal,
By SAM. C. PAINE, *Deputy.*

And I executed this notice by serving true copy hereof personally on D. F. Goodyear, chairman of the common council, @ 5.15 p. m., on 7th Feb'y, 1879, and on Marcus Jones, president of the board of aldermen, at 9.30 a. m. on 8th Feb'y, 1879.

M. T. WILLIAMSON,
U. S. Marshal,
By J. W. RAMSEY, *Deputy.*

5 ser., $10.00; 3 miles, 0.18—$10.18.

258 In the circuit court of United States, dist. West Tennessee.

GARRETT & SONS ET ALS.
vs. } No. 322. Eq.
CITY OF MEMPHIS.

To D. F. Goodyear, chairman of the council of the city of Memphis, and Marcus Jones, chairman of the board of aldermen of the city of Memphis, and C. W. Heiskell, late city att'y of the city of Memphis:

GENTLEMEN: You are hereby notified that on Monday, Feb'y 10th,

1879, at 10 o'clock a. m., we will apply before the honorable John Baxter, judge of the circuit court of the United States *court* for the sixth judicial circuit, for a receiver in the above court. Said application will be made at the court house in the city of Memphis, at which time and place you can appear and oppose if you see proper.

MYERS & SNEED,
For Compl'ts.

259 (Endorsed as follows:) Garrett & Sons vs. City of Memphis et als. Notice.

I received this writ at Memphis, Tenn., @ 9.30 a. m. on 8th day February, 1879, and executed the same by delivering copy hereof personally to the within named D. F. Goodyear, chairman of the common council, @ 9.40 a. m. on 8th Feb'y, 1879; Marcus Jones, chairman of the board of aldermen, at 10 a. m. on 8th Feb'y, 1879; and C. W. Heiskell, late city attorney, at 10.15 a. m. on 8th Feb'y, 1879.

M. T. WILLIAMSON,
U. S. Marshal,
By W. H. NEAL, *Deputy.*

3 serv., 6.00; 2 miles, 12—$6.12.

260 In the circuit court of the United States for the district of West Tennessee. In equity.

FAIRMAN ROGERS AND OTHERS
vs.
THE CITY OF MEMPHIS AND OTHERS. } No. 327.

The City of Memphis; John R. Flippin, former mayor; Marcus Jones, president of the board of aldermen; D. F. Goodyear, chairman of the common council; James C. Neely, former city treasurer; James A. Newsom, former city comptroller; C. W. Heiskell, former city attorney; W. A. McCloy, former city register, and all others interested, will take notice that on Monday, the 10th day of February, 1879, the plaintiffs in the above styled cause will apply to the above court, then in session in the city of Memphis, for the appointment of a receiver according to
261 the prayer of their bill in the cause then to be presented to the court.

February 8th, 1879.

WM. M. RANDOLPH,
Of Counsel for Plaintiffs.

(Endorsed as follows:) No. 327. Eq. Fairman Rogers and others vs. The City of Memphis and others. Notice of application for receiver.

At Memphis, Tenn., I executed this notice by serving true copy hereof personally on the within named, as follows: On the City of Memphis by copy to C. W. Heiskell, as city att'y, Feb'y 8, 1879, @ 2.32 p. m.; on John R. Flippin, former mayor, Feb'y 8th, 1879, @ 2.45 p. m.; on Marcus Jones, president of the board of aldermen, Feb'y 8th, 1879, @ 3.02 p. m.; on D. F. Goodyear, chairman of the common council, Feb'y 8, 1879, @ 2.38 p. m.; on James C. Neely, former city treasurer, Feb'y 8th, 1879, @ 3.12 p. m.; on James A. Newsom, former city comptroller, Feb'y 8th, 1879, @ 4.05 p. m.; on C. W. Heiskell, former city attorney, Feb'y 8th, 1879, @

2.32 p. m.; on W. A. McCloy, former city register, Feb'y 8th, 1879, @ 3.33 p. m.

M. T. WILLIAMSON,
U. S. Marshal W. Dist. Tenn.

8 serv., 16.00; 6 miles, 36—$16.36.

262 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof begun and held for its Nov. term, A. D. 1878, at the United States court house in the city of Memphis, in said district, on, to wit, the 12th day of Febr'y, A. D. 1879, in the following cause, to wit:

ROBT. GARRETT & SONS *vs.* CITY OF MEMPHIS ET ALS. } 322.

HOPKINS LOUDON *vs.* CITY OF MEMPHIS ET AL. } 323.

AHRENS M'N'F'G CO. *vs.* CITY OF MEMPHIS ET AL. } 324.

TALMADGE E. BROWN *vs.* CITY OF MEMPHIS ET ALS. } 326.

263 FAIRMAN RODGERS ET ALS. *vs.* CITY OF MEMPHIS ET ALS. } 327.

These several causes are, on motion of the plaintiff, consolidated, and will proceed and be heard together, and thereupon the motions in the several causes for the appointment of a receiver to take possession and control of the assets and property of the city of Memphis and to hold and to dispose of the same, under the direction of the court, for the payment of its debts, came on to be heard; and the court, being sufficiently advised thereon, is of opinion and orders that such motion be, and the same is hereby, granted. And it appearing to the court that T. J. Latham, esq., is a suitable person, it is ordered that he be, and he hereby is, appointed such receiver. He will first enter into a bond of the
264 penal sum of fifty (50) thousand dollars, with two or more securi-

1879, at 10 o'clock a. m., we will apply before the honorable John Baxter, judge of the circuit court of the United States *court* for the sixth judicial circuit, for a receiver in the above court. Said application will be made at the court house in the city of Memphis, at which time and place you can appear and oppose if you see proper.

MYERS & SNEED,
For Compl'ts.

259 (Endorsed as follows:) Garrett & Sons vs. City of Memphis et als. Notice.

I received this writ at Memphis, Tenn., @ 9.30 a. m. on 8th day February, 1879, and executed the same by delivering copy hereof personally to the within named D. F. Goodyear, chairman of the common council, @ 9.40 a. m. on 8th Feb'y, 1879; Marcus Jones, chairman of the board of aldermen, at 10 a. m. on 8th Feb'y, 1879; and C. W. Heiskell, late city attorney, at 10.15 a. m. on 8th Feb'y, 1879.

M. T. WILLIAMSON,
U. S. Marshal,
By W. H. NEAL, *Deputy.*

3 serv., 6.00; 2 miles, 12—$6.12.

260 In the circuit court of the United States for the district of West Tennessee. In equity.

FAIRMAN ROGERS AND OTHERS
vs.
THE CITY OF MEMPHIS AND OTHERS. } No. 327.

The City of Memphis; John R. Flippin, former mayor; Marcus Jones, president of the board of aldermen; D. F. Goodyear, chairman of the common council; James C. Neely, former city treasurer; James A. Newsom, former city comptroller; C. W. Heiskell, former city attorney; W. A. McCloy, former city register, and all others interested, will take notice that on Monday, the 10th day of February, 1879, the plaintiffs in the above styled cause will apply to the above court, then in session in the city of Memphis, for the appointment of a receiver according to
261 the prayer of their bill in the cause then to be presented to the court.

February 8th, 1879.

WM. M. RANDOLPH,
Of Counsel for Plaintiffs.

(Endorsed as follows:) No. 327. Eq. Fairman Rogers and others vs. The City of Memphis and others. Notice of application for receiver.

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2.32 p. m.; on W. A. McCloy, former city register, Feb'y 8th, 1879, @ 3.33 p. m.

M. T. WILLIAMSON,
U. S. Marshal W. Dist. Tenn.

8 serv., 16.00; 6 miles, 36—$16.36.

262 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof begun and held for its Nov. term, A. D. 1878, at the United States court house in the city of Memphis, in said district, on, to wit, the 12th day of Febr'y, A. D. 1879, in the following cause, to wit:

ROBT. GARRETT & SONS *vs.* CITY OF MEMPHIS ET ALS. } 322.

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TALMADGE E. BROWN *vs.* CITY OF MEMPHIS ET ALS. } 326.

263 FAIRMAN RODGERS ET ALS. *vs.* CITY OF MEMPHIS ET ALS. } 327.

These several causes are, on motion of the plaintiff, consolidated, and will proceed and be heard together, and thereupon the motions in the several causes for the appointment of a receiver to take possession and control of the assets and property of the city of Memphis and to hold and to dispose of the same, under the direction of the court, for the payment of its debts, came on to be heard; and the court, being sufficiently advised thereon, is of opinion and orders that such motion be, and the same is hereby, granted. And it appearing to the court that T. J. Latham, esq., is a suitable person, it is ordered that he be, and he hereby is, appointed such receiver. He will first enter into a bond of the
264 penal sum of fifty (50) thousand dollars, with two or more securities, to be approved by the court, conditioned for the faithful performance of his duties as such receiver. He will also take an oath faithfully and impartially to discharge the duties of his said office. Such bond and oath shall be filed and remain of record in court here.

After so qualifying, the said receiver will demand and receive and take possession of all the assets and property of the city of Memphis, including real and personal property and debts due to it, and taxes due and owing

to it, except the taxes appearing on the tax-books for the year 1878, for which special provisions is herein made, and except, also, the public highways of the city, the public squares, the public landings and wharves, the engine-houses, the fire-engines, and the horses belonging to
265 the fire department, the hose, the *the* hose carriages, an' the other property and appurtenances of the said department, the hospital and the property and appurtenances belonging thereto or used in connection therewith, the horses, wagons, tools, and impl*i*ments and other property used in connection with and necessary to the engineers' department of the city of Memphis, the property to and used in connection with the police department of the city, and the taxes heretofore levied for the support of the public schools of the city; all which excepted articles and property are excluded from the opperation of this order, and will not be taken possession of or interfered with by the said receiver until the further order of the court.

The said receiver will also take possession of all the tax books of the city of Memphis whereon unpaid taxes due it are charged,
266 except the tax books for the year 1878, and the person or persons having the same in charge will at once, on his demand, surrender the same to him.

He also will take possession and control of all the safes, books, papers, desks, office furniture, and other property belonging to the offices of mayor, comptroller, register, treasurer, tax collector, inspector, city attorney, necessary to the discharge of his duties as receiver, and of the buildings wherein the general council of the city has heretofore assembled, and the property in or belonging to such buildings not previously herein excepted from the opperation of this order, and the large safe in the mayor's office, and will safely keep the same, subject to the order of the court herein, and the person or persons having possession or con-
267 trol of the said property, or any part thereof, arè hereby required to surrender the same to him on demand.

And the said receiver will, as soon as he can conveniently, *can* make and file a full and true inventory of all the property of every description which may come to his control or possession as such receiver.

The defendant Geo. B. Fleece, as county trustee of Shelby County, from time to time as he collects taxes levied by the city of Memphis for the year 1878, except taxes levied for the support of the public schools, will at once pay over the sums he collects to the said receiver, in the lawful money of the United States, taking his receipt therefor, which shall be a protection and discharge to him for the sums s opaid. He will also at once, on the demand of the said receiver pay to him all the moneys
268 he has on hand collected for and on account of taxes levied by the city of Memphis for the year 1878, except sums collected on account of taxes levied for the support of the public schools, and will take his receipt therefor, which shall be a protection and discharge for the amount so paid.

The defendant James C. Neely, as former city treasurer of the city of Memphis, and the German National Bank of Memphis will at once, on the demand of the said receiver, turn over to him all the money i is hands or on deposit in the said bank received by him on the account of the city of Memphis, except moneys received for taxes levied for the support
on of public schools, and take his receipt therefor, and such payment shall
2. be a full acquittance and discharge for the sums so paid.
3.1 The defendant Jno. R. Flippin, as late mayor of the city of Mem-
@ 269 phis, will, on demand of the said receiver, pay over to him any money and deliver to him any property he has belonging to the

said city, except the large safe in the mayor's office and the papers and vouchers not necessary for the receiver in the discharge of his duties, and take his receipt thereof, which shall be a complete acquittance and discharge for the sum so paid and the property so delivered.

The defendant Jos. Uhl, as clerk of the circuit court of Shelby County, will at once, on demand of the said receiver, pay over to him the money he has on hand received on the account of redemption of property sold for taxes due the said city, except such money as may have been received on account of taxes levied for the support of the public schools, and take his receipt therefor, which shall be an acquittance and
270 discharge for the sum so paid, and he will hereafter from time to time as he receives other moneys on the said account pay over the same as aforesaid, with the exception aforesaid, to the said receiver, and take his receipt therefor, which shall be an acquittance and discharge for the sums so paid.

The defendant Jas. W. Moores will at once, on the demand of the said receiver, pay over to him any moneys in his hands received for or on account of taxes levied by the city of Memphis, except such sums as may have been received for taxes levied for the support of the public schools, and deliver him all *all* the city tax-books in his hands, and take his receipt thereof, which shall be an a'quittance and discharge for the sum so paid and for the said tax.

The said receiver will at once proceed to ascertain what prop-
271 erty, real and personal, other than that hereinbefore s'ecified or mentioned in the bills herein, the city of Memphis owns, including such as it has become the owner of by purchases at sales for nonpayment of taxes, and will take possession of such property where the possession is voluntar'y surrendered, and report the same to the court to the end that a proper disposition may be made thereof.

In the meantime he is authorized to rent the property he may so obtain possession of *f* from month to month, and to collect the rents and hold the same subject to the order of the court. As soon as the said receiver is in possession of the funds already collected and on hand, and hereinbefore directed to be turned over to him, he will at once deposit the same in some solvent bank or banks in Memphis, to the credit
272 of the clerk of this court, to be drawn out only by the order of this court, and report the same to the court, and in such report will show the amount received from each particular person on account of each particular tax, the year for which the same was levied, whether the tax on account of which the same has been paid was levied for the benefit of any particular person or persons or class of persons, and, if so, who such person or persons or class of persons are, and the propo'tions in which they are or claim to be entitled to share such fund or funds, and the amount thereof to which each one is or claims to be entitled.

And, from time to time, as he hereafter receives other moneys under this order or as such receiver, he will in the manner above directed deposit the same, and on the first & third Mondays of each month the said receiver shall make and file with the clerk a report, similar to that
273 required above, of the funds that may have been paid over to him.

The said receiver, as soon as he receives the tax-books herein ordered to be delivered to him, will proceed in such manner as he may deem best to demand and collect all the unpaid taxes appearing on the said tax-books, levied by and due to the city of Memphis, in the lawful money of the United States, and keep a proper account of such collections, showing therein the particular tax or taxes from which each sum

is derived, and the year for which the same was levied and the purpose for which levied.

If he finds it necessary, the said receiver may bring actions at law or suits in equity against any party or parties owing any debt due to the city of Memphis, or any tax or taxes appearing on the said tax-
274 books, for the recovery of the same, and in such actions or suits he may also proceed to enforce any specific lien or liens on any property, real or personal, for the payment of such tax or taxes, and to have the same sold for the satisfaction thereof. He may also, in proper cases, employ the process of garnishment and all other proper process. He may bring the party or parties owing such tax or taxes by petition in this cause before this court, or he may sue at law in this court in proper cases.

He may also, where he deems it best to do so, bring actions at law or suits in equity in the courts of the State, or make himself a party to any suit or suits already pending in such courts, where, by so doing, he may effect a collection of such tax or taxes, or any part thereof, and he is authorized to demand and receive and to receipt for all moneys
275 heretofore collected, or which hereafter may be collected, on any judgment or decree heretofore rendered in favor of the city of Memphis, belonging to the said city, whether such judgment or decree is in this court or any other court of the United States, or any court of the State of Tennessee.

He is hereby given authority to employ as many clerks and assistants as may be necessary to enable him to discharge the duties of his said office promptly and efficiently, who shall be paid a reasonable compensation out of the assets which may come to his hands, to be fixed hereafter by the court.

The said receiver will make use of the building and offices formerly occupied for a city hall, and belonging to the city of Memphis, or such part thereof as may be necessary for his purposes, and will make use of such safes, desks, tables, chairs, and other furniture and
276 property of the city of Memphis as he may have need of, but he will file in court here, as soon as he can conveniently make the same, a correct and full description and inventory of all the property he may use.

The said receiver is hereby authorized to buy and pay for the necessary books and stationary, the necessary fuel and lights, and whatever else may be necessary property to fit his office or offices for use and to enable him efficiently to discharge the duties imposed on him, but such expenditures shall always be subject to the control and approval or rejection of the court.

The said receiver is also hereby authorized to insure any property, real or personal, which may come to his hands as such receiver, where he deems it prudent to do so.

277 The said receiver is also empowered to employ one or more attorneys, if necessary, to conduct the prosecution or defence of any suit or suits he may find it necessary to bring, prosecute, or defend under the authority hereby conferred upon him. The compensation of such attorney or attorneys shall be fixed by the court hereafter, and shall be paid out of the assets which may come to the hands of the said receiver, in such manner as the court may direct.

The several persons and corporations upon whom the process of garnishment have been served under the executions issued on the judgments of a portion of the plaintiffs in these suits, as appears by the bills herein, and who are parties hereto, are hereby directed to deliver or pay to the

receiver herein appointed, on his demand as hereinbefore ordered,
278 all the property, money, and effects in their hands or under their control, respectively, belonging to the city of Memphis, and upon their severally doing so they are hereby severally discharged as such garnishees

It is further ordered that all persons having debts or claims of any character against the city of Memphis have leave to make themselves parties to these consolidated suits on or before the third Monday of May next, by severally filing petitions herein, setting forth their respective debts or claims, and that the clerk of this court at once give notice by publication in one of the daily morning papers published in Shelby County, for sixty days, that such persons are hereby required within the time aforesaid so to make themselves parties and file their debts and claims.

All other matters are reserved for the future orders of the court.

279 Judge Hammond being incompetent, did not sit in this case.

ROBT. GARRETT & SONS *vs.* CITY OF MEMPHIS ET ALS. } 322.

HOPKINS LOUDON *vs.* CITY OF MEMPHIS ET AL. } 323.

AHRENS MAN'F'G CO. *vs.* CITY OF MEMPHIS. } 324.

TALMADGE E. BROWN *vs.* CITY OF MEMPHIS ET ALS. } 326.

FAIRMAN RODGERS ET ALS. *vs.* CITY OF MEMPHIS ET ALS. } 327.

Upon motion of complainants' solicitors, leave is hereby granted them to file an amended bill and make Ben Eiseman and H. M. Neely parties defendant.

Judge Hammond being incompetent, did not sit in these cases.

280 ROBT. GARRETT & SONS *vs.* CITY OF MEMPHIS ET ALS. } 322.

HOPKINS LOUDON *vs.* CITY OF MEMPHIS ET ALS. } 323.

AHRENS MAN'F'G CO. *vs.* CITY OF MEMPHIS ET ALS. } 324.

TALMADGE E. BROWN *vs.* CITY OF MEMPHIS ET ALS. } 326.

FAIRMAN RODGERS ET ALS.
vs.
CITY OF MEMPHIS ET ALS. } 327.

In these several consolidated causes it appears to the satisfaction of the court that there is in the hands of Geo. B. Fleece, treasurer of the county of Shelby, the sum of four thousand five hundred and ninety-seven and $\frac{96}{100}$ dollars ($4,597$\frac{96}{100}$), and in the hands of the German National Bank of Memphis the further sum of twenty-eight hundred and thirty-two and $\frac{40}{100}$ dollars, to the credit of J. C. Neely as city treasurer, and that the same is the revenue of the city of Memphis remaining on hand and undisbursed, derived from licenses, tax on merchants (including the tax on merchants' capital), priviledges, and peddlers, heretofore imposed and assessed by the city of Memphis.

281 It appearing further that by the 93rd section of the act of the legislature of Tennessee, approved March 23rd, 1875, entitled "An act to regulate and organize municipal corporations of certain populations and the increase and dimunation of their powers, * * *," the said revenue is set apart and appropriated to the sole purpose of paying the current expenses of the police and fire department of said city.

282 It appearing further that there has been this day filed in these causes papers endorsed "List of police and firemen of the city of Memphis for the year 1878," marked Exhibit A and B, and in words and figures following, to wit:

EXHIBIT A.

Michael McFadden	1,121 72
James Madden	521 42
C. L. Bacigulupo	521 42
Thomas Murray	133 00
Micheal Regan	101 50
Dan Ryan	279 68
Peter McManus	36 50
Jno. Carroll	101 50
Thomas Ford	21 50
Micheal O. Neal	101 50
W. J. Raja	280 92
Eli Samuels	131 50
Alonzo Akin	101 50
Thos. Stein	101 50
Anthoney McCarty	250 00
William Murray	70 10
Julius Venterini	9 25
M. Cassiday	46 50
James E. Cleary	60 00
E. F. Cunny	434 68
C. H. M. Smith	347 93

283 Consolidated cases.

ROBERT GARRETT & SONS AND OTHERS *vs.* THE CITY OF MEMPHIS. } No. 322.

HOPKINS LOUDON *vs.* THE CITY OF MEMPHIS ET ALS. } No. 323.

TALLMADGE E. BROWN *vs.* THE CITY OF MEMPHIS ET ALS. } No. 326.

FAIRMAN ROGERS & OTHERS *vs.* THE CITY OF MEMPHIS & OTHERS. } No. 327.

To the honorable the judges of the circuit court of the United States for the sixth judicial circuit, district of West Tennessee. In equity.

Humbly complaining, orators show unto your honors that since the filing of their original and supplimental bills herein, they have
284 learned that H. M. Neely and Benjamin Eiseman, who are both citizens of the State of Tennessee, former interested commissioners of the city of Memphis, have in their hands, either individually or in the capacity as such commissioners, in their hands or under their control, certain moneys of or belonging to the assets of the city of Memphis, derived from taxes levied and collected by said city, for interest purposes, and perhaps for other purposes, and are therefore proper parties defendants to this proceeding, as having in their hands, or under their control, assets of said corporation described and set forth in said original and amended and supplemental bills, which ought to be paid over to the receiver herein.

Now in consideration of the premises, complainants pray that
285 this may be considered as an amendment to the original amended and supplemental bills heretofore filed herein, the said Benjamin Eiseman and H. M. Neely be made parties defendants to this proceeding, and that proper process issue requiring them to appear and answer the said original and amended and supplemental bills, and show what property or money they have in their hands in any capacity derived from taxes levied for any purpose by said city of Memphis, and that they be required to pay the same over to the receiver herein, and for general relief.

And will ever pray.

MYERS SNEED,
WM. M. RANDOLPH, AND
R. J. MORGAN,
Sol's for Compl'ts.

286 (Endorsed as follows:) No. 322. Garrett & Sons and others vs. The City of Memphis et als. Amended bill. Filed Feb'y 12th, 1879.

BELL W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

287 The President of the United States of America to the marshal of the western district of Tennessee, greeting:

You are hereby commanded to summon H. M. Neeley and Benjamin

Eiseman, citizen' of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States, in the sixth circuit for the western district of Tennessee, at Memphis, in said district, on the first Monday in April next, and then and there to plead, answer, or demur to the bill filed in the office of the clerk of the said court on the 12th day of Feb'ry, 1879, against said defendant, by Robert Garrett & Sons et als. Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at said Memphis, this 13th day of February, A. D. 1879, and the 103 of American Independence.

{ SEAL OF THE U. S. CIRCUIT COURT. }

BELL W. ETHERIDGE,
Clerk.

MEMORANDUM.—The defendants H. M. Neely and Benj. Eiseman are required to enter their appearances in this suit in the office of the clerk of the circuit court at Memphis on or before the day on which the
288 subpœna is returnable, or the allegations of the bill will be taken for confessed against said defendant and judgment rendered accordingly.

BELL W. ETHERIDGE, *Clerk.*

(Endorsed as follows:) No. 322. Circuit court of the United States, western district of Tennessee. Robt. Garrett & Sons vs. City of Memphis et als. Summons. Issued 13th day of Feb'y, 1879. Bell W. Etheridge, clerk. Returnable to April rule day, A. D. 1879. Returned & filed 21st day of Feb'y, A. D. 1879. Bell W. Etheridge, clerk.

At Memphis, Tenn., and on 13th day of Feb'y, 1879, I served true copy of this summons personally on the within named H. M. Neely and Ben. Eiseman.

M. T. WILLIAMSON,
U. S. Marshal,
By J. W. RAMSEY, *Deputy.*

2 serv., 4.00; 2 m., 12—$4.12.

289 In circuit court of the United States for the western district of Tennessee.

We, Thomas J. Latham, William S. Bruce, Joseph Bruce, William M. Sneed, Amos Woodruff, J. A. Hayes, and Emerson Etheridge, acknowledge ourselves indebted to , for the use of himself, Robert Garrett & Sons, and all other parties complainant and defendant who are or hereafter may be made parties to this suit or proceeding, in the sum of fifty thousand dollars.

The condition of the above obligation is such, that whereas the said Thomas J. Latham has been appointed receiver on the chancery side of this court in the foregoing consolidated cases by an order of this court duly entered of record in the above mentioned consolidated cases:
290 Now, if the said Thomas J. Latham shall well and faithfully perform the duties of said office of receiver, and shall account for and pay over what he receives under the orders of this court, and as the court may from time to time direct, and in all things conform to the orders and directions of the court which have been made, or which may

from time to time be made, in the aforesaid consolidated causes, then this obligation to be void; otherwise to remain in full force and effect.

Witness our hands and seals this 12th day of February, 1879.

T. J. LATHAM. [SEAL.]
WM. S. BRUCE. [SEAL.]
JOSEPH BRUCE. [SEAL.]
W. M. SNEED. [SEAL.]
EM. ETHERIDGE. [SEAL.]
A. WOODRUFF. [SEAL.]
J. A. HAYES, JR. [SEAL.]

291 UNITED STATES OF AMERICA,
Western District of Tennessee:

This day personally appeared before me, in open court, the foregoing obligors, T. J. Latham, Wm. S. Bruce, Joseph Bruce, W. M. Sneed, Emerson Etheridge, Amos Woodruff, and J. A. Hayes, jr., with all of whom I am personally acquainted, and acknowledged that they signed, sealed, and delivered the foregoing bond, respectively, and for the purposes therein contained.

In testimony whereof I have hereunto set my hand and seal this the 15th day of February, 1879.

[SEAL.] E. S. HAMMOND,
Dist. Judge, &c.

292 (Endorsed as follows:) Bond of T. J. Latham, receiver. Filed Feb'y 13th, 1879. Bell W. Etheridge, clerk. H. E. Andrews, D. C.

293 In the circuit court of the United States for the western district of Tennessee. In equity.

ROBERT GARRETT & SON
vs.
THE CITY OF MEMPHIS AND OTHERS. } No. 322.

and

HOPKINS LOUDON
vs.
THE CITY OF MEMPHIS AND OTHERS. } No. 323.

and

TALLMADGE E. BROWN
vs.
THE CITY OF MEMPHIS AND OTHERS. } No. 326.

and

FAIRMAN ROGERS
vs.
THE CITY OF MEMPHIS AND OTHERS. } No. 327.

and

AHRENS MANUFACTURING CO.
vs.
GEO. B. FLEECE AND OTHERS. } No. 324.

294 To Minor Meriwether, esq.:

You will take notice that on Saturday next, April 5th, 1879, at the Federal court room in the city of Knoxville, Tennessee, the plaintiffs in the several causes mentioned on the pending page of this sheet will move Hon. John Baxter, circuit judge of the United States in and for the sixth circuit, which includes the State of Tennessee, on an amended and supplemental bill which will then be presented to him, together with a motion for leave to file the same in the aforesaid consolidated causes, for an injunction enjoining and restraining you, your agents and attorneys, according to the prayer of the said bill, from demanding, taking possession of, receiving, collecting, or attempting to collect, or in any way interfering with the assets and property, real, personal, or mixed, and choses in action of the city of Memphis, including the debts due to it and the taxes of every descrip-
295 tion heretofore assessed and levied by or for it, and the evidences of such assets, property, debts, and taxes, consisting of deeds, bonds, bills, notes, accounts, books of assessment, tax-books and other books and writings of every description having reference to such property, assets, debts, and taxes, or any part thereof, and from instituting or prosecuting any suit or action of any kind whatsoever in any court against T. J. Latham, esq., who has been appointed by the circuit court of the United States for the district of West Tennessee, in the above consolidated causes, the receiver of the said assets, property, debts, and taxes, or against any other person or persons, for the recovery of any part of the assets, or property, or debts, or taxes aforesaid, or any tax-books, assessment-books, or other book or writing of any kind
296 having connection therewith or reference thereto, or to any part thereof, and from doing any act or thing asserting or tending to assert that the right to the possession or custody or control of the said assets or property or debts or taxes of the city of Memphis, or any part thereof, or to collect or receive the same, is rightfully in you as the back tax collector or receiver, appointed by the governor of the State of Tennessee, or in any other capacity, or is not in the said T. J. Latham as such receiver, as aforesaid, or tending to persuade, or advise, or hinder, or deter, or prevent any person or persons owing debts or taxes to the city of Memphis from paying the same to the said Latham as such receiver, until the further order of the court.

March 31st, 1879.

MYERS & SNEED, *Solicitors.*
297 WM. M. RANDOLPH, *Sol'r.*
TAYLOR & CARROLL, *Solicitors for Plaintiffs.*

(Endorsed as follows:) R. Garrett & Sons vs. No. 322, City of Memphis. Hopkins London vs. No. 323, The city of Memphis. T. E. Brown vs. No. 326, The city of Memphis. Fairman Rogers vs. No. 327 The city of Memphis. Notice rec'd & filed April 3d, 1879. Bell W. Etheridge, clerk, H. E. Andrews, D. C.

At Memphis, Tenn., and on 31st day March, 1879. @ 3.25 p. m., I served true copy of this notice, personally, on Minor Merriweather, esq.

M. T. WILLIAMSON,
U. S. Marshal,
By A. J. GARDNER, *Dep.*

Fees, $10.30.

298 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its Nov. term, A. D. 1878, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 10th day of April, A. D. 1879, in the following cause, to wit:

ROBERT GARRETT & SONS, PLAINTIFF,
vs.
CITY OF MEMPHIS ET AL., DEFENDANT. } No. 322.

HOPKINS LOUDON
vs.
CITY OF MEMPHIS ET ALS. } No. 323.

TALMADGE E. BROWN
vs.
CITY OF MEMPHIS ET ALS. } No. 326.

FAIRMAN ROGERS ET ALS.
vs.
CITY OF MEMPHIS ET ALS. } No. 327.

299 The motion by complainants for leave to file an amended and supplemental bill in the causes (consolidated) stated above, and for an injunction, came on and was heard by me at chambers, at Knoxville, Tennessee, on Saturday, the 5th instant.

These motions were argued orally by Mr. Sneed for complainants, and by Mr. Merriweather, in writing, for himself.

And now, after careful consideration of the questions raised and investigation of the authorities quoted, it is ordered, 1st, that the leave asked to file an amended and supplimental bill be, and the same is hereby, granted; and, 2ndly, that the application for an injunction be for the present denied.

Upon complainants' bills duly filed this court, early in last February, took cognizance of them, and appointed a receiver to aid it in the enforcement of the law, and two months reflection has failed to
300 suggest any error in or modification of the action then taken.

Having thus obtained jurisdiction of the parties and subject matter of litigation, it is not within the constitutional province of the legislature of Tennnessee by subsequent enactment to deprive this court of its jurisdiction and transfer this litigation to another tribunal. Chapter 92 of the acts of the legislature just adjourned, the act from which defendant Merriweather claims to have derived his authority, is, so far as it assumes to withdraw this litigation from this court and transfer it to another, unconstitutional and invalid. But no injunction is necessary to protect this court in its jurisdiction or to protect its receiver in the execution of the duties enjoined on him. Any attempt on the part of any one—it matters not under what pretence or color
301 of authority—to take the property, books, or papers committed by this court to the custody of its receiver, or otherwise hinder or obstruct him in the lawful and proper execution of his duties, will be

punished as a contempt of the authority of the court. Any person thus acting will be as amenable to punishment for obstructing the decree of this court as he would be for violating an injunction if one were granted.

Nor is it necessary to enjoin defendant Merriweather from instituting and prosecuting suits against other persons not parties to this proceeding. All that this court claims the right to do is to collect the assets of the late city of Memphis, including taxes regularly levied and not paid, and apply the same to payment of complainants and such other creditors as shall hereafter make themselves parties to this (consoli-
302 dated) suit and show themselves entitled to share in the distribution of said fund.

The institution and prosecution of said suits by defendant Merriweather against other persons in another tribunal may unnecessarily harrass and oppress the persons sued. But his action and the results of such suits can in no way prejudice the legal rights of complainants or any of them. The persons who may be thus sued by him, not parties to this case, must take care of themselves.

Nor is it deemed necessary to enjoin defendant Merriweather from making declarations or publishing notices claiming to be the rightful receiver of the city and entitled to the assets in controversy, nor from dissuading or deterring delinquent tax debtors from paying the taxes owing by them to the receiver of this court.

These alleged wrongful acts do not, in view of a court of equity,
303 constitute such threatened irreparable injury as to call for the extraordinary process of injunction.

Knoxville, Tennessee, April 7th, 1879.

JNO. BAXTER,
U. S. Circuit Judge.

304 In the circuit court of the United States, western district of Tennessee. In equity.

Consolidated cases.

ROBERT GARRETT & SONS *vs.* THE CITY OF MEMPHIS ET ALS., } No. 322.

and

HOPKINS LOUDON *vs.* THE CITY OF MEMPHIS ET ALS., } No. 323.

and

TALMADGE E. BROWN *vs.* THE CITY OF MEMPHIS ET ALS., } No. 326.

and

FAIRMAN ROGERS ET ALS. *vs.* THE CITY OF MEMPHIS ET ALS. } No. 327.

To the hon. the judges of the circuit court of the United States in and for the sixth judicial circuit, district of West Tennessee, at Memphis:

305 Your orators, Rob't Garrett & Sons, W. T. Walters, Thos. Swan, F. W. Bennett, Andrew Ried, Francis A. Cook, J. B. H. Smith, The Baltimore Equitable Society, W. H. Spence, P. Zell & Sons, all citizens of the State of Maryland, and John Stewart, Thos. Branch & Co., Statham & Taylor, citizens of the State of Virginia, and P. C. Bithell, citizen of the State of Louisiana, and P. S. March & Co., Chemical National Bank of New York, George Williams, citizens of the State of New York, and Richard Lathus, citizen of the State of New Jersey, complainants in the first-named bill & cause, and Talmadge E. Brown, citizen of the State of Iowa, Hopkins Loudon, citizen of the State of Illinois, and Fairman Rogers, citizen of the State of Pennsylvania,

306 and the other plaintiffs in *in* the bill in which he is a plaintiff, mentioned above as No. 327 on the docket of the court, to which reference is hereby made for their respective names and residences, vs. The City of Memphis, a municipal corporation created by the laws of the State of Tennessee and a resident thereof, John Flippin, mayor of said city, & W. J. Chase, W. Hewitt, James Elder, Simon Green, H. G. Dent, Marcus Jones, W. H. Brown, J. W. Moores, W. Benjes, Geo. Hasengur, composing the board of aldermen of Memphis, James Bohn, D. F. Goodyear, W. P. Proudfit, Chas. Quentil, sr., J. N. Soudon, J. H. White, W. H. Bates, M. Selig, L. L. Lanham, P. O. Wood, Andrew Renkert, Herman Caro, Thos. Boyle, Peter Tracy, W. J. Crossbis,

307 W. O. Harvey, Thos. Barnett, P. M. Patterson, L. D. Grant, William Bradford, composing the board of common council of Memphis, all together constituting the general council of said city, and as trustees and representatives of the corporation of Memphis, all citizens and residents of Shelby County, State of Tennessee; also Geo. B. Fleece, trustee of Shelby County, State of Tennessee, and ex-officio tax-collector of the city of Memphis, The German National Bank of Memphis, a corporation created under act of Congress of the United States, James W. Moores, former tax-collector of the city of Memphis, and Joseph Uhl, clerk of the circuit court of Shelby County, all residents and citizens of Shelby County, State of Tennessee, and the other per-

308 sons made defendants to the said bill and each of them, for whose names and residences reference is here made to the said bill, and Minor Merriweather, W. J. Harden, John B. Hill, and Joseph R. Williams, citizens of the State of Tennessee, and W. P. Woilsn, also a resident of the State of Tennessee, def'ts, Robert Garrett and Sons et als., orators, respectively show:

That on the 28th day of Janu'y, 1879, they filed their original bill in this cause against the def't City of Memphis, and that on Feb. 7th, 1879, they filed their amended and supplemental bill herein against certain of the def'ts named above, setting up, among other things, that complainants were severally judgment creditors of the city of Memphis in a large amount; that said judgments were recovered in the circuit court

309 of the United States for the district of West Tennessee, and that orators severally obtained peremptory writs of mandamus against the city of Memphis on said judgments to compel the levy of a special tax to pay said several judgments.

That in obedience to said peremptory mandates of this court in each of the several cases, the city of Memphis had, through its general council, levied for the years 1875, '76, '77, '78 special mandamus taxes for the

sole purpose of paying said several judgments, and that said tax, when collected, could be used for no other purpose whatever.

That the same was a trust fund for the payment of the special judgments for which it was levied, and could be used for nothing else,
310 and was to be each collected in lawful money of the United States.

That complainants, besides, held a large amount of claims against said city of Memphis, consisting of bonds and coupons issued by said city heretofore, under authority of express law in each case, which at the time provided ample means for the payment of the same and the interest thereon.

Said amended bill showed, further, that the said city of Memphis has from time to time issued a large amount of coupon bonds under express power and authority of the legislature, and that the judgments of orators aforesaid were recovered on the past-due bonds & coupons or interest warrants of said bonds, which at time of issuance gave full
311 power to levy a special tax to pay the said interest thereon, and provided for a sinking fund to pay the bonds on or before maturity.

That under an act of the legislature of the State of Tennessee, approved Janu'y 31st, 1879, the charter of the city of Memphis was declared to be abolished and repealed, and that the officers of the city of Memphis have abandoned their trusts and all the assets of said city, &c.; that there were taxes due to said city, which under the law is a debt, amounting to over $2,800,000, uncollected, besides funds in hands and the special funds and taxes levied for the sole purpose of paying compl'ts' several judgments under the mandate of this hon. court.

That by said act abolishing the charter of said city the legisla-
312 ture has assumed to take all the assets of said dissolved corporation of every description and turn them over to the State of Tennessee, including the special levies under order of this court made for the specific and sole purpose of paying compl'ts' said several judgments.

That by an act of the legislature of the State of Tennessee, approved January 31st, 1879, a taxing district was created consisting of the same geographical boundaries and limits precisely as the old city of Memphis; and by a section of said last named act attempts to turn over to said corporation, or whatever it can be named or called, all the assets and property of the city of Memphis, and further provides that said "taxing district" should not be liable to the payment of any of the debts or liabilities of the city of Memphis, whose charter has been abolished.

313 That an attempt had been made to take away all remedy for the collection of complainants' said judgments and claims, and no other supplied in place thereof.

That orators Talmadge E. Brown, Hopkins Loudon, Fairman Rogers, and the other plaintiffs who joined with them, filed their original bills herein, as will appear by the dates of filing and endorsed on them respectively, and severally set up substantially the same facts and other facts, as more fully appears by their respective bills against the same and other defendants. All of said several bills, as more fully appears by reference to them, pray for a receiver to be appointed by the court to take charg' of the assets of the city of Memphis, including its tax-books, money on hand, and accounts for taxes past due and ow-
314 ing, with power to collect the same, and also to take charge of all other property of every description of the city of Memphis, appropriate the same, in the order and manner and to the intent ed in the said bills respectively, to the payment of complainants' sev- claims, and those of others standing in like attitude. The bill of

Robert Garrett & Sons, and the bills of Fairman Rogers and others, as more fully appears by reference to them, are general creditors' bills to wind up the affairs of said dissolved corporation, all of which will more fully appear from said several bills, original and amended, aforesaid, and orators here refer to them for all the allegations contained, therein as though here fully set out, and ask that the same may be considered a part thereof.

315 Orators show that process has been served in said several causes on all the defendants therein so far as they know, but that none of the same have either pleaded, answered, or demurred thereto.

Orators further represent that said cause was heard on application for the appointment of said receiver as prayed, and that on the 14th day of Feb., 1879, T. J. Latham was appointed receiver in the aforesaid consolidated causes, empowering him to take possession of all the assets and property of the city of Memphis, including real and personal property and the taxes due and owing said city, except the taxes of 1878, which Geo. B. Fleece was directed to collect and pay over to said

316 receiver; that he should take charge of all tax-books of said city on which unpaid taxes appeared, as well as all monies in the hands of said city and its former officers and depositaries, and they were severally ordered to proceed to collect all taxes due the city of Memphis; all of which will fully and at large appear from said decree in these causes of record herein, to which orators refer for all its provisions as though set out herein.

Now, by way of suppliment and amendment, the permission of the court being had, orators show that since the rendition of said decree aforesaid the said receiver, T. J. Latham, has executed the bond designated therein, and fully qualified as such receiver; that he has taken

317 into his possession and control, so far as the same admitted of possession and control, all the property and assets of the city of Memphis set forth in said decree, so far as the same have come to his knowledge, all the tax-books of said city, except the tax-books for the year 1878, which still remains in the hands of defendant, Geo. B. Fleece, on which appears unpaid taxes, tax-bills, the city hall and other property and all money named in said decree, and is proceeding as rapidly as practicable to collect from delinquent tax-payers, and to carry into effect the said decree under which he was appointed.

Orators further show that after said receiver was in full possession and control of all and singular the tax-books, tax-bills, property,

318 and money and assets of the city of Memphis under the decree of this court, and proceeding to discharge his duties thereunder, after all said property, tax-books, and claims for unpaid taxes had been impounded in this court for complainants and other creditors under the proceedings and decree aforesaid, to wit, on the 13th day of March, 1879, the legislature of the State of Tennessee passed an act providing for the appointment of a receiver and back tax collector on behalf of the State of Tennessee, and therein enacted that as fast as he should collect any back or past due taxes he should pay the same over into the treasury of the State of Tennessee.

Said act further provides that as soon as said receiver shall be

319 appointed he shall enter on the duties of his office. It is also made his duty, and he is empowered, to take possession of all books, papers, and documents pertaining to the assessments and collection of taxes.

Said act further provides that said receiver shall file in the chancery

court an original creditors' bill in the name of the State on behalf of all the creditors against all the delinquent tax-payers. It further provides that taxes assessed prior to 1875 may be settled in the valid indebtedness of such extinct municipality, to wit, in valid bonds, whether due or not, and due coupons and any other valid debts of such municipality, with accrued interest, whether in the shape of scrip, warrants, judgments, ledger balances, paving certificates, or re-
320 ceipts for money paid by tax-payers to paving contractors. He is directed to receive said evidences of debt of said city in payment of taxes at the following rate, to wit, compromise bonds at their face value; all other character of indebtedness at fifty cents on the dollar, or one-half their face value, except judgments, which are to be received at fifty-five cents on the face value, said act further provides that said receiver and back tax collector shall receive in payment of taxes levied after 1874 and of the aforesaid valid indebtedness of the extinct municipality when there is no lien or equity requiring them to be paid in current money.

Said act, in the 6th section thereof, further provides, that when collections shall be made or taxes paid, as herein provided, or in cur-
321 rent or lawful money of the United States, it shall not be lawful for such receiver and back-tax collector to coerce payment of a greater sum than one fifth part annually, so as to distribute the whole through five equal installments, and that said period of five years shall begin from the appointment and qualification of the back-tax collector and receiver, and all costs of condemnation and penalties and charges are remitted: "Provided, however, that nothing therein contained is intended to interfere with any vested right which entitles the party having such right to a spe'dier collection, but only to extend the indulgence, wherein the State has power to do so, without interfering with vested rights."

Said act further provides that the owners, their heirs and vend-
322 ees, of all bonds heretofore sold for taxes within the limits of such extinct corporation, and bid off to the State or city, shall have five years within which to redeem same.

Orators further show that under the provisions of said act the governor of the State of Tennessee has appointed defendant Minor Meriwether back-tax collector and receiver for the assets and property, including the taxes due and unpaid to said city, and he has signified his acceptance of the said office and has qualified as such receiver and back-tax collector, and is attempting to exercise the powers conferred by the said act.

Orators show that said defendant Meriwether is interfering with said receiver of this court, and impeding him in the collection of back
323 taxes in his hand, and discouraging and preventing payments to him, in this, that he claims to have the right to take possession of the tax-books and other assets now in the hands of said T. J. Latham, the receiver of this court, and to be the only person rightfully entitled to the same, and is claiming that all parties owing taxes to said city of Memphis must pay the same to him as the receiver of the State of Tennessee under the act aforesaid, and that the receiver of the court aforesaid has no authority to collect any of said taxes and that payment to him will be void, and is representing that he will contest these matters.

All this interference is hindering, delaying, and obstructing the receiver of this court in his collections and the discharge of his

duties, and is an unlawful interference with the jurisdiction of this court.

Orators are informed, believe, and charge that the said defendant, Merriwether, is about to or will in some form, either by force or color of process, endeavor to take or obtain possession of the said tax-books, accounts, assets, and property of said city of Memphis now in the hands of the said T. S. Latham, receiver of this court, and that such contest will be attempted to be brought on, not in this court, where all the assets are impounded, but elsewhere, and in disregard of its jurisdiction and process, and thus probably will be brought about unnecessary litigation, and a conflict of jurisdiction between this and some other court.

The said act of the State legislature and the appointment of the said Meriwether as such back-tax collector and receiver, and his conduct aforesaid, have had the effect of virtually stopping all collections of taxes by the receiver of this court, either directly or through the said Fleece as trustee and tax collector, for the year 1878.

Your orators, charge on information and belief, that the said Merriweather has filed with the Hon. John Holman, jr., chairman of the county court of Shelby County, Tennessee, the bond required of him by said act of the legislature as such receiver and back tax collector, but whether the said bond has been approved or not your orators are not informed, but the fact is, that the said Merriweather has assumed to enter upon the duties of his said office of receiver and back tax collector, and is endeavoring to collect from parties owing the same taxes due the city of Memphis.

On the 31st day of March, 1879, without leave of the court and without consulting the receiver appointed by the court, or the parties plaintiff in any of the suits aforesaid, or their counsel, the said Merriweather, as such back tax collector and receiver, filed a bill in the chancery court of Shelby County, Tennessee, against the defendant W. P. Wilson, and therein he and the said Wilson agreed to a state of facts on which the court was asked to decide whether or not said Merriweather as such back tax collector and receiver was entitled to collect the unpaid taxes due the city of Memphis by the said W. P. Wilson, and to give judgment accordingly. A copy of said bill and the proceedings thereunder is herewith filed as part of this supplemental and amended bill, and marked Exhibit A and made part hereof.

The said Wilson immediately appeared in the said suit, without the service of process, on the day on which the bill was filed, and consented that a decree should go against him for the taxes appearing to be due from him upon the said state of facts, and such decree was submitted to the court and was in the hands of the court to be entered, if approved by the court, before the plaintiffs or their counsel had been informed of the filing of the bill.

The said bill and agreed state of facts wholly omitted to inform the said chancery court of the fact that this court had jurisdiction of these suits, in which the right to collect the said taxes so due by the said Wilson and other taxes were involved, and had appointed a receiver and made it his duty to collect the same, and, in fact, such receiver was proceeding to make such collections, and, in fact, wholly ignored this court and the suits aforesaid, and the receiver of the court and his rights in the premises.

The plaintiffs charge that said bill has not been filed, and the said agreed case has not been made for the purpose of having the question litigated in good faith and decided after argument by counsel representing interests really adverse to each other, but the

truth is, the said Merriweather and those advising and acting with him are controlling and directing both sides of the said pretended suit. The fact is, as the plaintiffs are informed and believe and charge, that the said Wilson has no interest in common with the plaintiffs, but is interested to have the said agreed case decided in favor of the said Merriweather, and really desires and hopes for such a decission. And plaintiffs do not believe he will make, permit, or intends there shall be any real opposition to the decree the said Merriweather desires.

As the evidence of the truth of these assertions just made,
330 the plaintiffs state and show that the said Wilson as well as the said Merriweather have refused to allow the counsel of the plaintiffs to appear in the said chancery court and argue the said cause on behalf of the said Wilson; have refused to allow the fact that these bills are pending in this court, and that a receiver has been appointed herein to collect the said taxes so owing by the said Wilson and other taxes, and that the said receiver so appointed is now proceeding to make such collections, all as hereinbefore alleged, to be brought into the said agreed case, and have refused to allow any person in whose name or behalf the plaintiffs can or will be allowed to litigate the ques-
331 tions involved to be made a party to the said agreed case so made between the said Merriweather and said Wilson.

The plaintiffs, through their counsel, have offered in every way that suggested itself as feasible to meet the said Merriweather fairly and openly in the courts of the State on the said agreed case between him and said Wilson and contest with him these questions he professes to be anxious to have decided, but by the action of the said Merriweather and the said Wilson and the course they have chosen to pursue, the plaintiffs have been prevented doing so in said case.

And now the plaintiffs charge that the real purpose of the said Merriweather and said Wilson and their confederates is to obtain
332 from the courts of the State, if possible, on a partial and incomplete statement of the facts, and in the absence of the plaintiffs and those having interests similar to theirs, and without affording them any opportunity of being heard by counsel or otherwise, a decision adverse to them of questions on which their rights in these suits to a greater or lesser extent depends, and afterwards to use such decision against these plaintiffs.

As soon as the counsel of the plaintiffs had ascertained that the said agreed case had been so made up between said Merriweather and Wilson, they appeared before the chancery court and asked to have the facts herein stated as to the pending of these suits and the facts connected therewith made a part of said agreed case, and to introduce
333 therein a party whom they could represent, and to appear before the court and argue the said suit on the part of the said defendant Wilson, but the said Merriweather and Wilson each refused to consent to said proposition, and the court declined to grant what was asked. The said counsel then presented a sworn petition, a copy of which appears in Exhibit A, and therein asked that the said pretended agreed case might be dismissed, but the court refused to permit such petition to be filed or to entertain the same, and the said Merriweather and Wilson refused to consent to the filing of the same. As a last resort, counsel presented a bill of exceptions, incorporating therein the said petition and the action of the court therein, and procured the
334 chancellor's order making it a part of the bill of exceptions to be filed as a part of the record in this cause.

Your orators charge that the said proceedings by the said Merri-

weather and the said Wilson are a fraud on the jurisdiction of this court, and has been instituted and will be prosecuted without reference to the wishes or interests of the parties plaintiff in these suits, and for the purpose of obtaining, if possible, from the courts of the State of Tennessee a decision favorable to said Merriweather and adverse to the plaintiffs herein, on the questions involved, without giving them an opportunity of presenting properly the facts of their case, or of being heard by counsel or otherwise therein.

Orators are advised, and so charge, that said act of the legisla-
335 ture aforesaid, approved March 13th, 1879, is unconstitutional and void; that it is a violation of the Constitution of the United States and also of the State of Tennessee, and impairs the obligation of the contracts several complainants entered into with the city of Memphis, and divests the right they have acquired by virtue of their proceedings aforesaid in this court; that particularly is said act of the legislature unconstitutional and void in so far as it attempts to authorize a tax collector, on behalf of the State of Tennessee, for the city of Memphis, and with authority to take possession of the assets of the city of Memphis, including all the books, papers, and documents appertaining to the assessment and collection of taxes of said city; and also in so far as said act empowers said receiver to file a general creditor's
336 bill in the name of the State against all the delinquent tax payers who owed taxes; and in so far as it empowers a court to reduce the assessment made on property, and in so far as said act provides that all taxes imposed prior to January, 1875, shall be payable in the valid indebtedness of the city or extinct municipal corporation, as set out in 5th section of said act; and particularly in so far as said act empowers said receiver to collect all taxes imposed after the year 1874 in the valid indebtedness of said city of Memphis or extinct municipality; and particularly in so far as said act provides that not more than one-fifth part of past-due taxes shall be enforced annually, so as to distribute the payment of the whole through a period of five equal
337 annual installments, and also so far as said act attempts to remit all costs of condemnation and penalties and charges, and in so far as it requires that the collections of said back taxes shall be paid into the treasury of the State of Tennessee, and in so far as it provides that the treasury of the State shall pay them out; and particularly in so far as said act extends the time of the redemption for property sold to five years after the qualification of said receiver and back-tax collector. In all said matters orators are advised that said act of the legislature is unconstitutional & void, and impairs the obligation of orators' contract and interferes with vested rights of complainants.

Orators are advised that as creditors of the city of Memphis,
338 and by virtue of their suits aforesaid, they have a vested right in said uncollected and due taxes, and particularly the sundry mandamus taxes for 1875, '76, '77, '78, and other taxes levied in obedience to writs of mandamus issued from this hon. court and other courts for the specific purpose of paying orators' several judgments and debts in this court and other courts, and their several debts and judgments which have been declared payable only in lawful money of the United States, all as more fully appears by their several bills filed herein.

They further charge, upon advice and belief, that the legislature has no power under the Constitution of the United States and of the State of Tennesse to postpone the collection of taxes through a period of five years, or any other time after they have been levied for the sole

339 purpose of paying orators' debts and judgments, or for any other purpose, after they had been impounded in this court for the payment of the debts and claims of orators, as set out in said bills, and other creditors standing in the same attitude.

And your orators further state and show that, although the said T. J. Latham has qualified as receiver under the order of the court aforesaid, and is authorized to collect and receive all the taxes remaining unpaid and due to the city of Memphis, and has given public notice to that effect, and is in possession of the tax-books of the city of Memphis as before stated,

Yet the following named persons, who are indebted for and on account of such taxes, have persistently refused and still refuse to pay the
340 same, to wit, William F. Hardin, Joseph R. Williams, Jno. B. Hill, and William P. Wilson, all of whom are residents of the State of Tennessee and citizens thereof, and may be found within the western district thereof, and are made parties defendants hereto as aforesaid.

And, upon information and belief, orators charge that the said Wm. F. Hardin, Joseph R. Williams, Jno. B. Hill, and William P. Wilson are the owners in fee of the several peices or parcels of land hereinafter set out as belonging to them, on which they owe taxes respectively. The said Joseph R. Williams is indebted for such taxes in the sum of $4,718.72, besides interest, as more fully appears by the tax-books in the possession of the said Latham as such receiver, and from the bills showing the amounts of such taxes, to be filed with and as a part of this
341 amended and supplemental bill, marked Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

The said Joseph R. Williams is indebted, as appears by the said tax-books and bills, as follows:

For taxes on lot 7, block 67, 80 by 200 feet, on Union street, Memphis, for the 36th corporate year of the city of Memphis, from July 1st, 1862, to July, 1863, $538.15, besides interest from July 1st, 1863, & $300 costs, as more fully appears by Exhibit No. 1 hereto. Also for taxes on the same property for the 37th corporate year, from July 1st, 1863, to July 1864, $538.13, and interest from July 1st, 1864, and costs, $3.00, as more fully appears by Exhibit No. 2 hereto.

Also on same property for 38 corporate year, from July 1st, 1864 July 1st, 1865, $611.80, and interest from July 1st, 1865, and costs $3.00, as will appear from Exhibit No. 3 hereto.

Also taxes for the 46th corporate year, 1873, on the same property; and also on part lot 5, block 67, 40 × 200 feet, Union street, Memphis; and on part lot 222,25 × 148 feet, Main st., Memphis; altogether $891.80, and interest from Jan'y 1st, 1874, as will appear from Exhibit No. 4 hereto.

342 Also taxes on the same property as is owing for the 46 corporate year above, for the 47 corporate year 1874, $191.10, and interest from Jan'y 1st, 1875, as will appear from Exhibit No. 5 hereto.

Also taxes on same property as above for the 48th corporate year 1875, $484.64, and interest from Jan'y 1st, 1876, and costs $7.50, as will appear from Exhibit 6 hereto.

Also taxes on same property as above for the 49th corporate year, 1876, $297.60, and interest from Jan'y 1, 1877, as will appear from Exhibit 7 hereto.

Also taxes on the same property as above for the 50th corporate year, 1877, $172.50, and interest from Jan'y 1st, 1878, and also costs $4.50, as will appear from Exhibit 8 hereto.

Also taxes on 24¾x148½ feet, Main street, east side, Memphis, for 51st corporate year 1878, on lot 222, and between Adams and Jef-
343 son streets, $270.00, as appears from Exhibit 9 hereto.

Also taxes on lot 5, block 67, 40x200 feet, Union street, and lot 7, block 67, 80x200 feet, Union street, Memphis, for the 51st corporate year, 1878, $720.00, as appears from Exhibit 10 hereto.

The said John B. Hill is indebted for such taxes in the sum of $4,838.17, besides interest, as more fully appears by the tax books in the possession of the said Latham, as such receiver, and from the bills showing the amounts of such taxes to be filed with and as a part of this amended and supplemental bill, marked Exhibits Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20.

The said John B. Hill is indebted, as appears by the said tax books and bills, as follows: Taxes on part lot 152, 18x74 feet, Centre alley, Memphis, $6.30 and interest from Jan'y 1st, 1869, and costs $4.00, as appears from Exhibit No. 11 hereto, being taxes for the 41st corporate year, 1868.

344 Also taxes for the 33rd corporate year, from July 1st, 1859, to July, 1860, on lot 357, 74x148 feet, Second street, Memphis, $460.80, and interest from July 1st, 1860, and costs $3.00, as will appear from Exhibit No. 12 hereto.

Also taxes on same lot last above for the 42nd corporate year, 1869, $416.45, and interest from Jan'y 1st, 1870, and also costs $9.00, as appears from Exhibit No. 13 hereto.

Also taxes on same property as last above for the 43rd corporate year 1870, $414.50, and interest from Jan'y 1st, 1871, as appears from Exhibit No. 14 hereto.

Also taxes on same property as last above described for the 45th corporate year 1872, $309.00, and interest from Jan'y 1st, 1873, and costs, $4.00, as appears by Exhibit No. 15 hereto.

Also taxes on part lot 152, 18½x74 feet, Centre alley, and lot 357, 74x148 feet, Second street, and lot 1, country lot 503, Memphis,
345 65x148 feet, Poplar street, $568.50, for the 46th corporate year 1873, and interest from Jan'y 1st, 1874, as appears from Exhibit No. 16 hereto.

Also taxes for the 48th corporate year 1875 on same property as in the 46th corporate year above, $810.48, and interest from Jan'y 1st, 1876, and also costs $5.00, as appears from Exhibit No. 17 hereto.

Also taxes for the 49th corporate year 1876 on lot 152, 18½x47 feet, Centre alley, and lot 357, 74x148 feet, Second street, Memphis, $642.64, and interest from Jan'y 1st, 1877, and costs $3.00, as appears from Exhibit No. 18 hereto.

Also taxes on lot 357, 74x148 feet, Second street, Memphis, for the 50th corporate year 1877, $700, and interest from Jan'y 1st, 1878, and costs $1.50, as appears from Exhibit No. 19 hereto.

Also taxes on lot 357, 74x148 feet, Second street, Memphis, for the 51st corporate year 1878, $480, as appears from Exhibit No. 20 hereto.

346 The said William F. Hardin is indebted for such taxes in the sum of $926.06 besides interest, as more fully appears by the tax books in the possession of the said Latham as such receiver, and from the bills showing the amounts of such taxes to be filed with and as a part of this amended and supplimental bill, marked Exhibits Nos. 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31.

The said Hardin is indebted, as appears by the said books and bills as follows, for taxes on lot 9' country lot 494, 100 feet on Johnson's

line, 128 feet on Armour's line, and 111 feet on Mansfield's line, a triangular lot in country lot 494 for the 51st corporate year 1878, $18.00, as appears from Exhibit No. 21 hereto.

Also taxes on lot 126, 74¼ x 148 feet west side 4th street, and lot 142, 74¼ x 148 feet E. side 4th street, Memphis, $64.40, for the 51st corporate year 1878, as appears from Exhibit No. 22 hereto.

347 Also taxes on country lot 514, block 2, 50 x 170 feet on Jones avenue, $22.50 for the 51st corporate year 1878, as appears from Exhibit 23 hereto.

Also taxes on following property for the 51st corporate year, 1878, viz, country lot 493, 30 x 148 north side Monroe st., $21.00; lot 17, block 26, 175 x 125 feet, west side Main street, $270.00; lots 4 and 5, block 10, 140 x 175 feet Elliott street, $165.00; lot 75, 22¾ x 54 feet, Adams street, $75.00; lot 1, country lot 472, 34 x 148 feet, north side Poplar st., $81.00, as appears more fully from Exhibits Nos. 24, 25, 26, 27, 28, hereto.

Also lot 75, 22¾ x 54 feet, Adams st., taxes for 50th corporate year 1877, $13.13 and interest from Jan'y 1st, 1878, and costs, $1.50, as appears from Exhibit No. 29 hereto.

Also taxes for the 49th corporate year, 1876, on lot 126, 74¼ x 148½ feet on Fourth st., and lot 142, 74¼ x 148½ Fourth st., $4.33, and

348 interest from Jan'y 1st, 1877, as appears from Exhibit No. 30 hereto.

Also taxes for the 49th corporate year 1876, $178.20 and interest from Jan'y 1st, 1877, and costs, $12.00, as appears from Exhibit No. 31 hereto, the same being on the following property: lot 7, block 26, 175 x 125 feet on Main st.; lots 4 and 5, block 10, 140 x 175 Elliott st., N. E. corner of Allen's avenue; lot 75, 22¾ x 54 feet on Adams street; lot 1, 34 x 148 feet Poplar street; country lot 494, 100 x 128 feet on Monroe st.; lot 4, country lot 493, 30 x 148 feet on Monroe street; block 2, country lot 514, 50 x 170 feet on Jones avenue.

The said William P. Wilson is indebted for such taxes in the sum of $ besides interest, as more fully appears by the tax-books in the possession of the said Latham, as such receiver, and from the bills showing the amounts of such taxes to be filed with and

349 as a part of the amended supplemental bill marked Exhibits Nos.

The said William P. Wilson is indebted, as appears by the said tax-books and bills, as follows:

For taxes on part lot 57, country lot 496, 30 x 100 feet, Madison st., S., for the 41st corporate year 1868, $10.80, and interest from Jan'y 1st, 1869, and costs, $4.00, as appears from Exhibit 32 hereto.

Also taxes on same lot as above for the 42nd corporate year 1869, $7.88 and costs, $9.00, and interest from Jan'y 1st, 1870, as appears from Exhibit 33 hereto.

Also taxes on same property as above for the 43rd corporate year 1870, $4.00, and interest from Jan'y 1st, 1871, as appears from Exhibit No. 34 hereto.

Also taxes on same property as above for the 44th corporate year 1871, $4.00 and interest from Jan'y 1st, 1872, as appears from

350 Exhibit 35 hereto.

Also taxes on same property as above for the 45th corporate year 1872, $5.00, and interest from Jan'y 1st, 1873, as appears from Exhibit No. 36 hereto.

Also, taxes for the 46th corporate year 1873, on same property as above, $4.50, as appears from Exhibit No. 37 hereto.

Also taxes on same property as above for the 47th corporate year 1874, $5.40, and interest from Jan'y 1st, 1875, as appears from Exhibit No. 38 hereto.

Also taxes on the same property as above for the 49th corporate year, 1876, $1.50, and costs $1.50, and interest from Jan'y 1st, 1877, as appears from Exhibit No. 39 hereto.

Also taxes for the 46th corporate year 1873, on part lot 204, 50 x 148 feet, Main street, Memphis, $46.20, and interest from Jan'y 1st, 1874, as appears from Exhibit No. 40 hereto.

351 Also taxes for the 51st corporate year 1878, on part lot 204, 50 x 148² feet, Main st., E. S. N. E. cor. alley, and on lot 57, country lot 496, 30 x 111 feet south side New Madison street, $117.00, as appears from Exhibit No. 41 hereto.

Also taxes for the 51st corporate year 1878, on country lot 493, west side Charleston avenue, and on lot 22, Adams st., south 31 x 148 feet, and lot 21, Adams st., south $37\frac{3}{10}$ x 148 feet; also on lots 5 and 6, Ross avenue, s. s., 62 x 148 feet, lot 58, Washington street, s. s., 62 x 148 feet, lot 58 Washington st., s. s., 62 x 148 feet; lot 59, Manassas st., north side, 39 x 415 feet; all together, $97.50, as appears from Exhibit No. 42 hereto.

Also taxes for the 51st corporate year 1878, on block 63, McKey and Polk, 70 x 150 feet; lot 24, block 56, Georgia st., 50 x 170 feet; lot 28, block 56, Georgia st., 50 x 170 feet, and lot 25, block 56, Georgia

352 st., 50 x 170 feet; all together $13.39, as appears from Exhibit No. 43 hereto.

Said Wilson is also indebted to the city of Memphis for taxes for the 34th corporate year, 1860, on part of lot 371, 30 ft. x 90 feet on alley, as shown on plan of city of Memphis, as shown by Exhibit No. 44, made part hereof, in the sum of forty dollars ($40.00), and interest thereon from Jan'y 1st, 1861.

Also for taxes on same property for the 40th corporate year 1867, in the sum of $39.31, with interest thereon from Jan'y 1st, 1868, as shown by Exhibit No. 45 hereto annexed.

Also for taxes for the 40th corporate year 1867, on part of lot 371, fronting on the south side of Jefferson street 58 feet and running back 148 feet, as laid down on the plan of the city of Memphis, Tennessee, as shown by Exhibit No. 46, made part hereof, in the sum

353 of $329.81, with interest thereon from Janu'y 1st, 1868.

Also for taxes on the same property for the corporate year from July 1st, 1866, to July 1st, 1867, as shown by Exhibit No. 47, made part hereof, in the sum of $656.62, with interest thereon from Jan'y 1st, 1867.

Also for taxes on part of lot 371, as laid down on the plan of said city of Memphis, fronting 30 feet on alley by 90 feet deep, for the 40th corporate year from July 1st, 1866, to July 1st, 1867, as shown by Exhibit No. 48, made part hereof, in the sum of $75.63, with interest thereon from July 1st, 1867.

Also for taxes on same property for the 42nd corporate year 1869, as shown by Exhibit No. 49, made part hereof, in the sum of $58.87, with interest thereon from Jan'y 1st, 1870.

354 Also for taxes on part lot 378 on plan of said city, fronting 58 feet on south side of Jefferson street and running back between parallel lines 148 feet, for 42nd corporate year 1869, as shown by Exhibit No. 50, made part hereof, in the sum of $569, with interest thereon from Jan'y 1st, 1870.

Also for taxes on part lot 371 on said plan of said city, fronting 30 by

90 feet on alley, for the 43rd corporate year 1870, as shown by Exhibit No. 51, made part hereof, in the sum of $57, with interest from Jan'y 1st, 1871.

Also for taxes on part lot 371 on plan of said city, fronting 58 by 148 feet on Jefferson street, for the 43d corporate year 1870, as shown by Exhibit No. 52, made part hereof, in the sum of $500, with interest thereon from Jan'y 1st, 1871.

355 Also for taxes on part lot 371 on plan of said city, fronting 30 by 70 in alley, for 45th corporate year 1872, as shown by Exhibit No. 53, made part hereof, in the sum of $62.50, with interest thereon from January 1st, 1873.

Also for taxes on part lot 371 on plan of said city, fronting 58 by 148 feet on Jefferson street, for 45 corporate year 1872, as shown by Exhibit No. 54, made part hereof, in the sum of $550.00, with interest thereon from Jan'y 1st, 1873.

Also for taxes on lot 5, fronting 18 by 70 feet on south side of Jefferson st.; lot 4, fronting 20 by 70 feet on south side of Jefferson street; lot 3, fronting 20 by 70 feet on south side of Jefferson street; lot 2, fronting 18⅛ by 58 feet on Third street, and lot 1, fronting 55 by 148 feet on Third street, for 46th corporate year 1873, as shown by Exhibit No. 55,

356 made part hereof, in the sum of $360.00, with interest from Jan'y 1st, 1874.

Also for taxes on same property for 47th corporate year 1874, as shown by Exhibit No. 56, made part hereof, in the sum of $369, with interest from Jan'y 1st, 1875.

Also for taxes on part lot 371, fronting 58 by 118 feet on Jefferson street, southwest corner of Third, and on part lot 371, fronting 30 by 148½ feet on Third street and in rear of above, for the T. E. Brown mandamus tax for 47th corporate year 1876, as shown by Exhibit No. 57, made part hereof, in the sum of $79.50, with interest thereon from 1st of Jan'y, 1877.

The said Wilson may be indebted on other property for other taxes, but the plaintiffs have not as yet been able to ascertain the fact.

Orators show and charge that the said defendants, William F.

357 Hardin, Joseph R. Williams, John B. Hill, and William P. Wilson, are the owners respectively of the several lots or parcels of land herein above set out, and are severally indebted to the city of Memphis in the several amounts as set out against each for taxes duly assessed and levied according to the laws of the State of Tennessee and the charter and ordinances of the said city of Memphis, and that each of said amounts is still due and unpaid by said defendants respectively, as set forth, together with interest and costs of condemnation as set out for the respective corporate years as hereinbefore shown by the itemized bills, &c.

Orators further state, upon information and belief, that for the taxes against the said defendants, respectively, remaining wholly unpaid distress warrants were issued against each of said defendants re-

358 spectively, as required by law, for the taxes of the respective years, and were severally returned by the proper officers unsatisfied, the said several defendants having no personal property out of which to distrain or collect taxes.

Orators further show that said different peices of property was severally sold by the tax-collector for the taxes, costs, and charges for the following corporate years, to wit: And there being no bidder or purchaser for the same, said lots or parcels of land were severally struck off to the said city of Memphis. For the other years for which taxes were assessed there was no deed or sale of said several lots of property,

but orators are informed that judgment of condemnation was made by the proper court.

Orators refer to said judgments and orders of sale and collect-
359 ors' deeds as the same remains of record in the said court and in the register's office of Shelby County, Tennessee, as if made part hereof by copy, and will file certified copies thereof at the hearing, if required.

Orators state that they are advised that it is doubtful whether the several sales of said property and purchases by the city of Memphis of said several lots of land of the several defendants aforesaid confer a valid title in fee-simple to said lots to the city of Memphis by the said advertisements, condemnation, and sale. In fact, they are advised that such sales do not confer a pefect title, on account of irregularities in said sales, but this they leave to the judgment of the court; but however this may be, orators charge that for all these taxes levied and assessed as aforesaid on the several lots of land of the several defendants aforesaid the city of Memphis held a lien by law on said several lots
360 superior to all other liens, for said taxes, and that said liens still exist, superior to all other liens, in favor of said city, for the several amounts of taxes for the several years as set forth.

Orators further show and charge that under its charter the city of Memphis had full power and authority to pass all laws and ordinances necessary to enable it to collect its revenue, and also, under the law, had all the remedies for the collection of the same which the State possesses or possessed. And that on the day of , 187 , the city of Memphis, by its general council, passed an ordinance by which all the remedies provided by the laws of the State for the collection of State revenue were adopted and put in force as to all revenue then due or thereafter to become due to said city.

361 Orators further show that under the law of the State as well as the general law said city of Memphis had and has the power to enforce all liens for taxes in a court of equity.

Orators are advised that the said taxes now due from the several defendants constitute debts due said city, for which there is an express statuatory as well as common law lien on the several peices of property and lots of land, which are enforcible in a court of chancery.

Orators charge that the said several defendants, W. P. Wilson, Jos. R. Williams, William F. Hardin, John B. Hill, severally own the fee in and to the property and lots above set out, upon which taxes have been assessed and levied against them as severally set out, and on which the taxes aforesaid appear to be due.

362 Orators are advised, and so state and charge, that they are entitled to be subrogated to all the rights of the city of Memphis for the collection of said several tax bills and debts due from said defendants, Jos. R. Williams, John B. Hill, William P. Wilson, and William F. Hardin, and to the enforcement of all liens in the favor of said city of Memphis against the said several pieces or lots of land for the amounts due as aforesaid exhibits, or to have the said sums of money collected and liens enforced, and property sold and the proceeds applied to the payment of orators' several debts and claims.

Orators charge that said several defendants are also liable to a personal judgment for the said amounts of taxes due from each in addition to the lien against them on said lots of land.

Orators further state that they have no adequate remedy at law
363 for the enforcement of their said claims. They charge that all of said several sums and amounts for taxes assessed and levied as

aforesaid against each and every of said defendants, as appear from the assessment and tax-books of the city of Memphis, are still justly due and unpaid, together with interest thereon, from the date that appears in said exhibits respectively, as well as costs and penalties.

Orators are advised that all of said claims and taxes due are now under the law payable only in the lawful money of the United States, and no part of the same in city indebtedness or scrip; and that certainly all taxes levied for the years 1875, 1876, 1877, & 1878 under the mandate of this and other courts for the specific purpose of paying the certain judgments of orators and others, called a sundry
364 mandamus tax and Brown mandamus tax, are certainly collectable only in lawful money of the United States, in the manner in which it was ordered to be collected. They charge that said defendants should pay said several sums in money so owing by them.

Premises considered, your orators pray that the defendants to the several original bills and the amendments thereto aforesaid be made defendants hereto, and required to answer each and all the allegations herein contained; that the said Minor Merriweather, William F. Hardin, Joseph R. Williams, William P. Wilson, and John B. Hill be made defendants to the said original bills and the amendments thereto, and to this amended and supplemental bill, and be brought in by proper process, and required to answer the same; that an injunction at once
365 issue under the seal of the court, enjoining and restraining the said Merriweather, his agents and attorneys, and each of them, from demanding, taking possession of, recovering, collecting or attempting to collect, or in any way interfering with the assets and property, real, personal or mixed, or choses in action of the city of Memphis, including the debts due to it, taxes of every description heretofore assessed and levied by or for it, and the evidences of such assets, property, debts and taxes, consisting of deeds, bonds, bills, notes, accounts, books of assessment, tax books and other books, and writings of every description, having reference to such property, assets, debts, taxes, or any part thereof; and from instituting or prosecuting any suits or
366 actions of any kind whatever in any court against the said T. J Latham, as such receiver as aforesaid, or against any other person or persons, for the recovery of any part of the assets or property, debts, taxes aforesaid, or any tax-books, assessment books, or other books or writings of any kind having connection therewith or reference thereto or to any part thereof; and from doing any act or thing, and from making or publishing in any manner whatsoever any declaration or notice, printed, written or verbal, asserting or tending to assert that the right to the property, or custody, or control of the said assets or debts or taxes of the city of Memphis, or property of any kind thereof, or to collect or receive the same, is rightfully in him, the said Merriweather, or is not in the said T. J. Latham, as such receiver, or
367 tending to pursuaide or advise, prevent, hinder or deter the persons owing debts or taxes to the city of Memphis, from paying the same to the said T. J. Latham, as such receiver; and from proceeding further with the agreed case aforesaid, so made up by and between the said Merriweather and the said Wilson.

Orators further pray that an account may be taken as to the amount of taxes or debts due from each and every of the said defendants, Joseph R. Williams, William P. Wilson, William F. Hardin, and John B. Hill, severally, and the particular lot or lots of land upon which the said taxes was assessed and levied, and upon which such taxes constitute a lien, and the amount due and owing by each and every of said last-named

defendants to the city of Memphis on account of past due taxes or on any other account.

368 Orators further pray that they may be subrogated to all the rights, claims, and liens of the said city of Memphis against the said defendants severally; and that the lien which the said defendant, the city of Memphis, held or holds against or on the several lots and parcels of land aforesaid, on account of said taxes assessed and levied thereon, may be declared and fixed by this honorable court by proper decree for the benefit of orators and other creditors in like attitude, and that personal decrees be also rendered against each of said defendants for the amount found due from them on the taking of the said accounts for the benefit of orators; and that unless said defendants shall severally pay into the registry of this court by a day fixed the amounts so

369 found due from them on the claims aforesaid that then this court shall decree that said several parcels or lots of land be sold to satisfy the amounts so found due on account of each as liens thereon, and in order that all equity of redemption or repurchase shall be cut off and forever barred.

Orators pray that the said lots be sold on a credit of seven months, and barring all right of redemption and the proceeds when realized be applied to the payment of orators, claims herein, and other creditors in like attitude who may come in and be made parties hereto.

Orators pray for all such other, further, general, and special relief as in equity they may be entitled, and will ever pray.

This is the first application for injunction in this cause.

MYERS & SNEED,

370 WM. M. RANDOLPH,

CARROLL & TAYLOR,

Sol's for Compl'ts.

371 STATE OF TENNESSEE,

Shelby County:

Personally appeared before me William M. Sneed, one of the attorneys of the complainants in foregoing bill, who states that his client's orators in foregoing bill are now residents of Tennessee, and are absent from the district of West Tennessee. That as counsel is familiar with the facts in this case, and that he believs the facts stated to be true.

W. M. SNEED.

Subscribed and sworn to before me this 3d day of April, 1879.

H. E. ANDREWS,

Clerk U. S. Dist. Court.

Filed 10 April, 1879.

372 EXHIBIT A.

In the chancery court of Shelby County.

THE STATE OF TENNESSEE } An agreed case.
vs.
W. P. WILSON. }

To the Hon. W. W. McDowell, chancellor:

The State of Tennessee, by Minor Meriwether, receiver and back tax collector for the extinct municipality, the city of Memphis, duly commissioned by the governor and qualified as such by virtue of and under

the authority of an act of the general assembly, passed 13th March, 1879, chapter 92 of the acts of 1879, complains of W. P. Wilson, a resident of Shelby County, and shows unto your honort, that by virtue of an act of the general assembly passed January 29th, 1879,
373 in pursuance of the three sections of said act, the charter of the city of Memphis was repealed and the territory and inhabitants thereof were remanded to the government of the State, and all the public property used by said municipality for municipal purposes was transferred to the custody and control of the State, to remain public property for the uses to which it had hitherto been applied. And by an act of the general assembly passed January 29, 1879, entitled "An act to establish taxing districts in this State, and to provide the means of local governments for the same," it was declared that all of the indebtedness for taxes or otherwise, whether in litigation or otherwise, dues to the municipalities whose charters were repealed (Memphis being one of them) shall vest in and become the property of the State, to be
374 disposed of for the settlement of the debts of said municipalities, as shall hereafter be provided by law.

And in pursuance of the above expressed purpose, the general assembly passed an act on the 13th of March, 1879, entitled "An act to collect and dispose of the taxes assessed for municipal corporations in this State whose charters have been or may be repealed or which may surrender their charters, and to provide for the compromise and make settlement of the debts of such extinct municipal corporations respectively," chapter 92 which act provides for the appointment by the governor of an officer for such extinct corporations respectively, to be known as receiver and back tax collector, who is charged with the duties of
375 collecting all taxes imposed by such extinct municipalities up to the time of the repeal or surrender of their charters, for the purpose of applying the same to the extinguishment of the debts of said extinct municipalities respectively, and said officer is required to enter upon the duties of said office immediately after his appointment and qualification.

3. Under this act your orator, Minor Meriwether, was, on the 14th of March, 1879, duly commissioned by the governor, under the great seal of the State, as receiver and back tax collector for the extinct municipality of the city of Memphis, and has given bond and qualified as said receiver and back tax collector as required by the act, and entered upon the discharge of his duties as such.

376 4. W. P. Wilson is indebted for certain back taxes due to the extinct municipality of the city of Memphis on real estate more particularly set out, and your orator, as such receiver and back tax collector, has demanded of W. P. Wilson the payment of said taxes in accordance with the requirement of said act, chapter 92. Said Wilson is desirous of disencumbering his property of said taxes by the payment of the same in a lawful manner without awaiting the delay and incurring the expenses incident to the proceedings under the general bill provided for in said act, but is in doubt whether your orator, as said receiver and back tax collector, is entitled to collect the same, or whether his receipt as such officer would be a legal acquit'ance for said taxes, and is also in doubt whether your orator, if he has the right
377 to collect at all, has the right to exact more than the face value of any valid indebtedness of said extinct municipality other than compromise bonds and coupons in payment of taxes prior to 1875, the fifth section of said act requiring your orator to receive such indebtedness for taxes for years prior to 1875 at their face value for compromise

bonds and coupons, and at 55 per cent. of their face value for judgments and at one-half their face for other classes of valid indebtedness, and therefore refuses to pay until these questions are determined.

Many other persons indebted for taxes to said extinct municipality are affected by the same doubts by which your orator is greatly impeded in the collection of said taxes, and if these questions
378 could be at once resolved in his favor, your orator would be enabled to collect speedily a large amount of said taxes without litigation and apply them to the extinguishment of the debts of said extinct municipality.

In order, therefore, to arrive at an immediate determination of these questions and the matters in controversy between your orator and said Wilson, at the least expense in the interests of the State, the delinquent tax-payers, and the creditors of the extinct corporation of Memphis, it is agreed between your orator, as receiver and back tax collector, in behalf of the State of Tennessee, and W. P. Wilson, as follows, viz:

Agreed facts.

1. Minor Meriwether has been duly commissioned by the gov-
379 ernor of Tennessee as receiver and back tax collector of the ex-municipality, the city of Memphis, under the act above recited, and has given bond and qualified as such.

2. At the date of the passage of the act 29th January, 1879, chapter 10, repealing the charter of the city of Memphis, W. P. Wilson was indebted to the city of Memphis for taxes duly assessed and levied for the years—

1868 $14.80, with interest from January 1st, 1869.
1869 $16.88, with interest from January 1st, 1870.
1870 $4.00, with interest from January 1st, 1871.
1871 $4.00, with interest from January 1st, 1872.
1872 $5.00, with interest from January 1st, 1873.
1873 $2.00, with interest from January 1st, 1874.
1874 $4.50, with interest from January 1st, 1875.
380 1876 $3.00, with interest from January 1st, 1877.
1878 $175.20, with interest from January 1st, 1879.

All as shown in annexed Exhibit A, and all of which are still due and unpaid.

Minor Meriwether, as such receiver and back tax collector, demanded of W. P. Wilson payment of the aforesaid taxes, offering to receive in payment of all those taxes for the years prior to 1875, any valid indebtedness of the city of Memphis, at the rates prescribed in section 5 of said act, viz, the compromise or funded bonds at their face value, judgments $\frac{55}{100}$ of their face value, and any other evidences of debt at one-half of their face value, one-fifth of the amount to be paid at the time the demand was made, and one-fifth each succeeding year until the
381 whole is paid. W. P. Wilson refused to pay, first, because the act denies that the acts hereinbefore recited confer any lawful authority to collect; and, second, if they do confer lawful authority to collect at all, then he is entitled to pay the taxes for the years prior to 1875 in the valid indebtedness of the city at its full face value.

4. It is admitted that if the said acts and proclamation of the governor are valid, and confer power to collect said taxes, then Minor Merriweather is the rightful officer to collect them, and that he may collect them for the years prior to 1875 in the valid indebtedness of said retired municipality at the rates specified in section 5 of the act, or at their full

face value, as the court may determine to be lawful, and judg-
382 ment may be rendered against said Wilson for said taxes and interest, if the said acts are held to confer the power and authority to collect in favor of Minor Merriweather as receiver and back tax collector, payable in such manner as the court may determine.

All objections to matters of form, and in respect to proper parties, are waived, and it is agreed that the court shall make any amendments of form, and in respect to parties, necessary to reach a decision of the questions upon their merits.

Upon this state of facts, the following questions are submitted:

1. Do the aforesaid acts and proclamation of the governor confer lawful authority to collect back taxes through an officer of the State appointed in a mode therein appointed?

383 2. If they do confer such authority, can the said officer exact more than the face value of any valid indebtedness of the extinct municipality in payment of the taxes for the years prior to 1875, or must he accept such indebtedness at its full face value?

The judgment of the court is invoked on these questions and a decree in accordance therewith.

THE STATE OF TENNESSEE,
By MINOR MERIWETHER,
Receiver and Back Tax Collector.
W. P. WILSON.

FINLAY & PETERS,
Attorneys for Wilson.

Minor Meriwether and W. P. Wilson make oaths that the controversy in this case is real and the proceedings in good faith do determine the rights of the parties.

MINOR MERIWETHER.
W. P. WILSON.

384 Sworn to and subscribed before me March 31st, 1879.
R. J. BLACK, *C. & M.*

We agree that the costs shall be divided, and to save expense, that the said acts and proclamation of the governor, published in the Memphis Appeal by authority, may be read as authentic copies of the said acts and proclamation. It is also agreed that no state and county tax in litigation in this court or the supreme court shall be adjudged against W. P. Wilson in case the questions are adjudged against him.

THE STATE OF TENNESSEE,
By MINOR MERRIWEATHER,
Receiver and Back Tax Collector.
W. P. WILSON.

385 Chancery court of Shelby County.

STATE OF TENNESSEE,
Shelby County, ss:

Pleas before the honorable W. W. McDowell, chancellor of the chancery court of Shelby County, held in the city of Memphis and State and county aforesaid, and at the October term thereof, 1878.

Be it remembered, that heretofore, to wit, on April 2nd, 1879, a bill of exceptions was filed in a certain cause in the words and figures following, viz:

Bill of exceptions.—Filed April 2, 1879.—R. J. Black, C. and M.

STATE OF TENNESSEE
vs.
W. P. WILSON. } 3263. R. D.

Be it remembered that on the hearing of this agreed case the
386 following proceedings took place.

W. M. Sneed and others, solicitors on behalf of their clients, presented the petition and affidavit in the words and figures following, to wit:

EXHIBIT A.

Petition of W. M. Sneed and others.

In the chancery court.

To Hon. W. W. McDowell, chancellor:

The State of Tennessee, by Minor Merriweather, &c., vs. W. P. Wilson. Bill and agreed case. The petition of Wm. M. Randolph and D. E. Myers, and Wm. M. Sneed, partners as Myers & Sneed, and Julius H. Taylor and Wm. H. Carroll, all solicitors of the court, and all citizens of Shelby County, respectfully states and shows:

387 That petitioners severally and respectively represent as counsel divers creditors of the city of Memphis, whose names will be given if required, and many of such creditors have now pending in the circuit court of the United States for the western district of Tennessee, at Memphis, suits in equity against the city of Memphis and others. The object of the said suits, as will more fully appear by the record thereof remaining in the said court, to which reference is here made, is in general to have the assets and property of the city of Memphis, including the taxes due to it, applied to the payments of the debts owing by the said city and particularly the debts due by it to the plaintiffs severally, wherein petitioners represent. To that end the plaintiffs in the said suits wherein petitioners so represent have obtained
388 from the said circuit court the appointment of T. J. Latham, esq., as receiver, and he has been directed by the said court to proceed to collect all the taxes due to the city of Memphis, including those due by the said Wilson, and has entered upon the discharge of his duties as such receiver, and is now proceeding to collect the same as fast as he can.

The said suits were begun and the said order appointing the said receiver was made, and the said receiver entered upon the discharge of his duties and was in possession of the assets of said city, including the claims in this case against W. P. Wilson, long before the act of the legislature referred to in the agreed case aforesaid was passed, and long before the said Merriweather was appointed by the governor
389 such back tax collector and receiver.

The petitioners call the attention of the court to the fact that the agreed case mentioned in the caption omits wholly any mention of the suits aforesaid so pending in the circuit court of the United States; omits any reference to the appointment of a receiver by the said court in the said suits to collect the taxes owing by the said Wilson, and other taxes; and omits to state that the said receiver is now proceeding to collect the said taxes.

The said agreed case fails altogether to state that the said taxes so due and owing by the said Wilson are claimed or are sought to be collected by any one but the said Merriweather.

Petitioners are advised and believe that these facts and others
390 ought to be before the court to enable it to decide properly the questions that are involved in the controversy between these clients aforesaid, or the said Latham, as receiver as aforesaid, on the one side, and the said Merriweather as such back tax collector and receiver on the other.

Petitioners have requested the said Merriweather and the said Wilson each to include these facts in their said agreed case; and have requested the privilege of introducing another party into the said agreed case whom they could represent; and have requested to be permitted to appear as counsel and argue the said cause in this court and the supreme court of the State, if they see proper to do so, on behalf of the said Wilson, or the interest he assumes to represent; but all
391 their requests have been refused, and they are not now as they suppose in a position entitling them to control in any way the said pretended agreed case.

Petitioners are informed and believe that the said Wilson has no interest in common with their clients, or adverse to the said Merriweather in many of the important issues involved; that his interest and his sympathies, as petitioners believe, are really in many respects with the said Merriweather in the said pretended agreed case, and that he desires and hopes the said Merriweather may obtain a decree therein in his favor as to several of the questions involved.

Petitioners believe and aver that the said proceedings on the part of said Merriweather and the said Wilson are a contempt of the circ-
392 uit court of the United States aforesaid, and are a fraud upon the jurisdiction of this court; and have been contrived and are being carried out for the purpose of obtaining a decision of questions in which their clients aforesaid are vitally interested in their absence, and without giving them an opportunity of being heard, and upon an imperfect and partial statement of the facts involved.

In consideration of the premises and forasmuch as the said clients of petitioners have no specific mode of relief against the wrong aforesaid sought to be perpetrated upon them, they pray the court here to dismiss the said agreed case, and to decline proceeding therein except upon terms which will secure petitioners' clients a full and fair hearing
393 on all the facts material to the merits of the questions in which they have an interest as aforesaid.

And as in duty, &c.

W. M. RANDOLPH.
MYERS & SNEED.
TAYLOR & CARROLL.

We, D. E. Myers, W. M. Sneed, W. H. Carroll, and W. M. Randolph do state on oath that the matters contained in the foregoing petition are true to the best of our respective knowledge, information, and belief.

D. E. MYERS.
W. H. SNEED.
W. H. CARROLL.
WM. M. RANDOLPH.

Subscribed and sworn to before me this second day of April, 1879.

R. J. BLACK,
C. & M.

And asked that they be heard and the agreed case be dismissed.
394 Thereupon the complainant and the defendant in the agreed case made to the said petitioners the following tender in writing:

Exhibit B to bill of exceptions. Tender of complainant and defendant.

STATE OF TENN. } 3263. R. D.
vs.
W. P. WILSON. }

1st. The clients of petitioners in U. S. Federal court in U. S. circuit court for district of West Tennessee may become parties to the agreed case if they wish.

2nd. They may file a transcript of all the Federal court proceedings, if they wish, at their own costs, so as to present the questions which they wish to raise, but this upon condition that their clients in
395 said Federal court become parties. Or they may make their receiver, T. J. Latham, a party if they will come with a complete transcript of the Federal court proceedings on the same terms.

3rd. It was also proposed by complainant, on the agreed case, to make another agreed case, raising the questions embraced in this and such question as they, on behalf of their clients, might wish to raise, in addition, if they would furnish a tax payer willing to agree with complainant and make a case.

STATE OF TENNESSEE,
By MINER MERRIWEATHER,
Receiver and Back-tax Collector.

W. P. WILSON.

And thereupon the said petitioners declined to accept the offer
396 contained in said tender, refusing to make their client parties, or to make the said receiver party upon the terms stated, and to file a transcript of the record and proceedings of the Federal court mentioned in their petition, and therefore the chancellor declined to entertain the petition and dismissed the agreed cause.

To all which the said petitioners excepted and tendered this their bill of exceptions, which was signed and made a part of the record.

W. W. McDOWELL,
Chancellor.

397 STATE OF TENNESSEE,
Shelby County, ss:

I, R. J. Black, clerk and master of the chancery court of Shelby County, do hereby certify that the foregoing 5 pages comprise a full, true, and perfect copy of bill of exceptions had in a certain cause lately pending herein, wherein State of Tennessee, complainant, and W. P. Wilson, defendant, as the same appear on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said court, at office, in the city of Memphis, this 3rd day of April, A. D. 1879.

[SEAL.]

R. J. BLACK,
Clerk and Master.

(Endorsed as follows:) 322. Eq. Circuit court of the United States, western district of Tennessee. Re. Garrett Sons vs. City of Memphis. (Part of Ex. A to amended & supplimental bill in consolidated causes 322, 323, 326, 327.) Bill of exceptions from chancery court in

398 case of State vs. Wilson. Filed April 10th, 1879. Bell W. Etheridge, cl'k.

399 (Endorsed as follows:) No. 322. Circuit court of the United States, western district of Tennessee. Ro. Garrett & Sons et als. vs. City of Memphis. Filed April 10, 1879. Bell W. Etheridge, clerk. Bill and exhibits. Exhibit A.

400 The President of the United States of America to the marshal of the western district of Tennessee, greeting:

You are hereby commanded to summon Minor Merriweather, William P. Wilson, William F. Hardin, Joseph R. Williams, and John B. Hill, citizens of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States, in the sixth circuit, for the western district of Tennessee, at Memphis, in said district, on the first Monday in May next, and then and there to plead, answer, or demur to the bill filed in the office of the clerk of the said court on the 28th day January, 1879, and the amended and supplemental bills thereto, against said defendants by Robert Garrett & Sons, Hopkins Loudon, Tallmadge E. Brown, and Fairman Rogers.

Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Memphis, this 10th day of April, A. D. 1879, and the 103 of American Independence.

{ SEAL OF THE U. S. CIRCUIT COURT. }

BELL W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

MEMORANDUM.—The defendants are required to enter their appearance in this suit in the office of the clerk of the circuit court at Memphis on or before the day on which the subpœna is returnable, or the allegations of the bills will be taken for confessed against
401 said defendant and judgment rendered accordingly.

BELL W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

(Endorsed as follows:) Nos. 322, 323, 326, 327. Circuit court of the United States, western district of Tennessee. Ro. Garrett & Sons vs. City of Memphis. Summons. Issued 10 day of April, 1879. Returnable to May rule day, A. D. 1879. Ret'd and filed 16th day of April, A. D. 1879. Bell W. Etheridge, clerk.

At Memphis, Tenn., and on the eleventh day of April, A. D. 1879, I served true copy hereof personally on the within named Minor Merriweather, Wm. P. Wilson, Joseph R. Williams, and John B. Hill. M. T. Williamson, U. S. marshal, by W. H. Neal, deputy.

And at Memphis, Tenn., and on 14th day April, 1879, I served true copy hereof personally on the within named W. F. Hardin.

M. T. WILLIAMSON,
U. S. Marshal,
By W. H. NEAL, *Deputy.*

5 services in four cases, 40.00; 3 miles each, 0.90—$40.90.

402 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States, within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof begun and

held for its May term, A. D. 1879, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 28 day of May, A. D. 1879, in the following cause, to wit:

Consolidated causes.

ROBERT GARRETT & SONS AND OTHERS, plaintiff, *vs.* CITY OF MEMPHIS AND OTHERS, DEFENDANT'. } No. 322.

HOPKINS LOUDON *vs.* CITY OF MEMPHIS. } No. 323.

AHRENS MANUFACTURING CO. *vs.* CITY OF MEMPHIS ET ALS. } No. 324.

T. E. BROWN *vs.* CITY OF MEMPHIS. } No. 326.

FAIRMAN ROGERS ET ALS. *vs.* CITY OF MEMPHIS ET ALS. } No. 327.

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The defendant, John R. Flippin, appears, and by the leave of the court withdraws his answer herein, and adopts the demurrers filed by the other defendants, and elects to stand by such demurrers.

And thereuppon, by the consent of the plaintiffs, the orders pro confesso as to the defendants who have filed demurrers, but not as to any others, are hereby set aside, and the said demurrers so filed are ordered to stand for argument.

ROBERT GARRETT & SONS ET ALS. *vs.* CITY OF MEMPHIS ET ALS. } 322.

HOPKINS LOUDON *vs.* CITY OF MEMPHIS. } 323.

AHRENS MANUFACTURING CO. *vs.* CITY OF MEMPHIS ET ALS. } 324.

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T. E. BROWN *vs.* CITY OF MEMPHIS ET ALS. } 326.

FAIRMAN ROGERS ET ALS. *vs.* CITY OF MEMPHIS ET ALS. } 327.

These are bills filed by the complainants as creditors of the city of

Memphis, and among other things prays for the appointment of a receiver by this court, to take charge of the property and assets of said city of Memphis, and to administer them, under the direction of the court, in payment of the debts due complainants and such other creditors as might come in and be made parties, and Mr. T. J. Latham, having been appointed such receiver by an order and decree of this court, entered in these causes, on the 12th day of February 1879,
405 and having qualified as receiver under said order and decree, is now acting as such receiver. Now comes Minor Meriwether, who has been made a party to these proceedings by amended and supplimental bills, and described therein as receiver and back tax collector of the city of Memphis under an appointment from the governor of the State of Tennessee, pursuant to the act of the general assembly, entitled an act to collect and dispose of the taxes assessed for municipal corporations in this State, whose charters have, &c., &c., Chap. 92, passed on the 13 day of March, 1879, and approved by the governor on the 14th day of March, 1879, and by his solicitors moved the court to vacate, annul and set aside said order and decree appointing T. J.
406 Latham receiver, because and for the reason that the act passed by the general assembly of the State of Tennessee, and approved by the governor on the 29th day of January, 1879, transferred all of the assets, property and monies of the said city of Memphis to the State, and by the act of the general assembly under which the governor appointed said Meriwether receiver and collector of back taxes he is alone authorized to receive and collect the same.

2. The said Meriwether, State receiver, by his solicitors, move the court to vacate, annul, and set aside or modify so much of said order and decree appointing T. J. Latham receiver in these causes as authorizes and directs him to proceed to collect delinquent taxes due to said municipal corporation, because and for the reasons:

1st. This court has no jurisdiction to enforce the collection of
407 back or delinquent taxes due from citizens of said municipal corporations, either at the instance of the complainants or of T. J. Latham, its receiver.

2. Because the said Meriwether is alone authorized by the statutes and *and* laws of Tennessee to collect and administer the same.

3. Because as to the delinquent or back taxes, the bills and proceedings in these causes are in the nature of garnishment bills and proceedings founded thereon against delinquent tax payers, and said revenues or taxes not being subject to execution are not subject to garnishment bill in the nature of an execution, or any other proceeding in this court.

4. Because said decree and order directs and commands the said T. J. Latham, as such receiver, to collect said delinquent or back taxes
408 in lawful money of the United States, while by the laws and statutes in force in the State of Tennessee said back taxes levied prior to the year 1875 are payable in the past due indebtedness of said city of Memphis, and because by the law of 1879, under which said Meriwether holds his appointment, said back taxes are to be collected differently from the mode directed in said order and decree.

And the said motions coming on to be argued at this term, it occurred as questions:

1st. Whether the motion to vacate, annul, and set aside said order and decree of date 12th day of February, 1879, appointing T. J. Latham receiver, should be sustained and allowed or overruled and disallowed; and

2. Whether so much of said order and decree appointing T. J.

409 Latham receiver in these causes, as directs him to proceed to collect delinquent taxes due to said municipal corporation, should be set aside, annulled, vacated or modified, for the causes and reasons stated in support of the second motion; on which questions the opinions of the judges were opposed, the Hon. John Baxter, circuit judge presiding, being of the opinion that both of said motions should be disallowed and overruled, and the Hon. E. S. Hammond, district judge, being opposed, it is thereupon ordered, adjudged, and decreed that the said motions be disallowed and overruled in conformity with section 650 of the Revised Statutes of the United States for the time being, from which order overruling said motions the defendant prays an appeal to the next term of the Supreme Court of the United
410 States, at Washington, which is granted upon defendant's executing bond herein in the penal sum of $250.00, conditioned for the payment of the costs, as required by law, and thirty days is allowed for the giving said bond. Whereupon, on motion of Minor Meriwether, State receiver, by his counsel, that the points on which the disagreement hath happened may during the term be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court to be finally decided, it is ordered that the foregoing state of the pleadings, and the said motions, which is made up under the direction of the judges, be certified according to the request of the defendant, Meriwether, by his counsel, and the law in that case made and provided.

JOHN BAXTER,
U. S. Circuit Judge of the 6th Circuit.
E. S. HAMMOND,
U. S. District Judge.

411 *Demurrer.*

U. S. circuit court. In equity.

ROBERT GARRETT & SONS ET ALS.
vs.
THE CITY OF MEMPHIS ET ALS. } No. 322.

Filed 28 Jan'y, 1879.

HOPKINS LOUDON
vs.
THE CITY OF MEMPHIS. } No. 323.

Filed 30 Jan'y, 1879.

TALLMADGE E. BROWN
vs.
THE CITY OF MEMPHIS ET ALS. } No. 326.

Filed 7 Feb'y, 1879.

FAIRMAN ROGERS ET ALS.
vs.
THE CITY OF MEMPHIS ET ALS. } No. 327.

Filed 10 Feb'y, 1879.

Consolidated cases.

Defendant, Minor Meriwether, in his capacity as receiver and back-tax collector of the extinct municipality, the city of Memphis, an officer of the State of Tennessee, not confessing or acknowledging all or any of the matters and things in the said original and amended and sup-
412 plemental bills of complainants in the above-entitled causes to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer says:

1. This court hath not jurisdiction of the subject-matter. Wherefore, and for divers other good causes of demurrer appearing in the said bills, this defendant doth demur to the said bills and to all the matters and things in said bills contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bills; and he prays to be hence dismissed, with his reasonable costs in this behalf sustained.

2. And for further cause of demurrer says that complainants have not by their said bills made such a case as entitles them in a court of
413 equity to any relief from or against this defendant touching the matters contained in said bill, or any of such matters. Wherefore, &c., he prays, &c.

3. And for further cause of demurrer says that it appears by said bills exhibited against this defendant and many others, for several and distinct matters and causes, in many whereof, as appears by said bills, this defendant is not in any manner interested or concerned, and by joining distinct matters together which do not depend on each other in the said bill the pleadings, orders, and proceedings will, in the progress of said suit, be intricate and prolix, and this defendant be put to unnecessary charges in taking copies of the same, though several parts in no way relate to or concern him. Wherefore, &c.

4. And for further cause says this court hath not jurisdiction of municipal corporations. Wherefore, &c.

5. And for further cause says that it appears by complainants'
414 own showing, by said bills, that two of said bills, 322 and 323, were filed while the city of Memphis had yet a corporate existence, and this court hath not jurisdiction to take possession of the revenues and property, or collect the taxes of an existing municipal corporation, and wherefore he demurs to the two said bills, 322 and 323, and all the amended and supplemental bills founded thereon, and to so much of the other bills, especially bill 327, as is founded thereon; and prays the judgment, &c.

6. And for further cause says that said bills and amended and supplemental bills are multifarious in this, that they unite divers and separate causes of action against divers individuals in one bill; wherefore he demurs and prays, &c.

7. And for further cause says that said bills, amended and sup-
415 plemental bills misjoin parties in this, that they embrace in one bill divers parties having no priority on divers and separate causes of action, and seeks to hold them liable to divers complainants on separate causes of action; wherefore he demurs and prays, &c.

8. And for further cause of demurrer says that said bills and amended and supplemental bills filed since the 28 January, 1879, show that at the date of their filing the charter of the city of Memphis had been abolished, and that it had no longer a corporate existence; and

this court hath not jurisdiction in such case to appoint an officer to collect the taxes imposed by said municipality before the repeal of its charter, as prayed for in said bills, but if it can collect them at all (which is not admitted), must do so by and through the officers of the State, elected or appointed for that purpose, and in the mode provided
416 by the laws of the State and none other; wherefore he demurs and prays, &c.

9. And for further cause says that said bills and amended and supplemental bills filed since the 28 January, 1879, show that at the date of their filing the charter of the city of Memphis had been abolished and had no longer a corporate existence, and this court hath not jurisdiction in such case to appoint an officer to collect the taxes imposed by said municipality before the repeal of its charter for general purposes, as for any other than the mandamus taxes, nor to apply the same to the payment of complainants' claims, as prayed in said bills; but if it can collect them at all (which is not admitted), must do so by and through the officers of the State, elected or appointed for that purpose, and in the mode provided by the laws of the State, and none other; wherefore he demurs to so much of said bills as seeks to do this, and prays, &c.

417 10. And for further cause says this court hath not jurisdiction or power to assess, levy and collect taxes on the property of persons situate within the territory of the late city of Memphis, as prayed in said bills; wherefore he demurs to so much of said bills as seeks this, and prays, &c.

11. And for further cause says this court hath not jurisdiction or power to subject the property used by the late corporation of Memphis for municipal purposes, such as streets, alleys, parks, promenades, wharfs, engine houses, fire engines, horses, wagons, and other property, real and personal, used for public or municipal purposes, to the payment of complainants' claims, as prayed in said bills; wherefore he demurs to so much of said bills as seeks this, and prays, &c.

12. And for further cause says this court hath not jurisdiction or
418 power to hinder, interfere with, or prevent this defendant, an officer of the State of Tennessee, from performing the duties of his office as declared by the law of the State, which said bills seek to do; wherefore he demurs to so much of said bills, and prays, &c.

13. And for further cause says this court hath no jurisdiction or power to issue writs of mandamus to compel municipal corporations to levy and collect taxes unless specially authorized by law, and the taxes levied under the said writs from this court and the State courts are illegal and void, and this court hath no jurisdiction to hereafter issue such mandamus, there being no law authorizing the same; wherefore he demurs to so much of said bills as seek to collect the same.

15. And for further cause says that the act of 19 March, 1877, chap. 71, authorizing the appointment of a receiver in certain contin-
419 gencies, confers no jurisdiction on this court for that purpose; wherefore he demurs to so much of said bills as seeks the benefit of said act, and prays, &c.

15. And for further cause says that the act of 19 March, 1877, which authorizes the chancery court to appoint a receiver, is unconstitutional and void; wherefore he demurs to so much of said bills as seeks the benefit of said act.

16. And for further cause says the act of 19 March, 1877, authorizing appointment of receiver, applies only to living municipal corporations, and if constitutional, is no longer applicable to the extinct corporation

of Memphis; wherefore he demurs to such of said bills as seeks the benefit thereof, and prays, &c.

17. And for further cause says that complainant London shows by his bill that he is prosecuting an action at law against the city of
420 Memphis for the same claim set out in his bill, and that he shows he has not recovered any judgment; wherefore he demurs to so much of said bills as seeks to recover said claim in this proceeding and prays, &c.

Defendant does not by assigning other causes of demurrer thereby waive in any degree those causes which go to the jurisdiction of the subject-matter or the jurisdiction in any form, or to the merits, but reserves the full benefit thereof as if the other causes had not been assigned.

I certify that in my opinion the foregoing demurrers are well founded in law and proper to be filed in the above cause.

MINOR MERIWETHER,
Solicitor & of Counsel for Defendant.

UNITED SATES OF AMERICA,
District of West Tennessee:

421 Minor Meriwether, being duly sworn, deposes that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

Subscribed and sworn to before me 23d May, 1879.
BELL W. ETHERIDGE, *Clerk.*

(Endorsed as follows:) 322, 323, 326, 327, consolidated. Garrett & Son et als. vs. The City of Memphis et als. Demurrer of M. Meriwether. Filed May 23d, 1879. Bell W. Etheridge, clerk.

422 Consolidated causes in the circuit court of the United States for the western district of Tennessee. In equity.

ROBERT GARRETT & SONS & OTHERS
vs.
THE CITY OF MEMPHIS & OTHERS. } No. 322.

HOPKINS LOUDON
vs.
THE CITY OF MEMPHIS & OTHERS. } No. 323.

TALLMADGE E. BROWN
vs.
THE CITY OF MEMPHIS & OTHERS. } No. 326.

FAIRMAN ROGERS
vs.
THE CITY OF MEMPHIS & OTHERS. } No. 327.

The demurrer of Joseph R. Williams, W. F. Hardin, and John B. Hill to bills and amended bills in the consolidated causes above named.

The defendants, Joseph R. Williams, William F. Hardin, and John B. Hill, who have been made defendants in these causes as de-

423 linquents owing taxes to the late city of Memphis, appear by counsel, and these defendants by protesation, not confessing or acknowledging all or any of the matters and things in the said bills, amended bills, and supplemental bills to be true in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer—

1. Show that in and by said bills it appears that the charter of the city of Memphis was repealed by an act of the general assembly of the State of Tennessee passed Jan'y 29, 1879, the effect of which repeal was, as these defendants are advised, to extinguish all claims, debts, and demands of whatsoever nature owing to or from said city of Memphis, including the debts owing to the complainants, and the arrearages of taxes owing by these defendants; whereupon, &c.

424 2. And for a further cause of demurrer, these defendants show that this honorable court hath no jurisdiction to entertain a bill or other equitable proceeding in the nature of a garnishment bill, as they are advised this is against these defendants, debtors, or delinquent tax payers owing money to the late municipal corporation known as the city of Memphis, at the instance or in behalf of creditors of that defunct corporation; wherefore, &c.

3. And for further cause of demurrer, these defendants show that it appears by complainants' bill that there is no privity between the said complainants and these defendants, to enable the said complainants to call on these defendants for payment of any debts due to the municipal corporation of Memphis from these defendants; wherefore, &c.

And for further cause of demurrer, &c., show that the said
425 complainants have not in and by their said bills, original, amended, or supplemental, made or stated such a case as do or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from or against these defendants.

Wherefore these defendants pray the judgment of this honorable court whether they shall make further answer, &c.

HARRIS, McKISICK & TURLEY,
Sol's for Def'ts.

I certify that in my opinion the foregoing demurrers are well founded in law and proper to be filed in these causes.

May 23d, 1879.

L. D. McKISICK,
of Counsel for Demurrants.

Personally appeared Joseph R. Williams, W. F. Hardin, and John B Hill, the foregoing demurrants, who say that they have read the foregoing demurrer to the bill of complainants in this suit, and that
426 the same is not interposed for the purpose of delaying the suit or any proceeding therein.

JOS. R. WILLIAMS.
WM. F. HARDIN.
J. B. HILL.

Sworn to and subscribed before me this 23d May, 1879.

BELL W. ETHERIDGE, *Clerk.*

(Endorsed as follows:) Nos. 322, 323, 326, & 327. Robert Garrett & Sons vs. The City of Memphis & others. Demurrer of Joseph R. Williams, W. F. Hardin, and J. B. Hill. Filed May 23d, 1879. Bell W. Etheridge, cl'k.

427 *Demurrer of defendants.*

D. F. Goodyear, John R. Flippin, W. J. Chase, W. Hewitt, James Elder, Simon Green, H. G. Dent, Marcus Jones, W. N. Brown, J. W. Morris, W. Burjes, Geo. Hassinger, J. Behr, W. P. Proudfit, Chas. Quintel, sr., J. N. Surden, F. H. White, W. H. Bates, M. Selig, L. L. Lawhorn, P. O. Wood, Andrew Rurkut, Herman Caro, Thos. Boyle, Peter Tracy, W. J. Crosbie, W. O. Harvy, Thomas Barrett, P. M. Patterson, L. D. Grant, Wm. Bradford, composing late general council of Memphis, &c., & city of
428 Memphis, defendants, by protestation, &c., not confessing any of the matters in the bill alleged to be true, demur to the said bill and to the several parts thereof, and for causes of demurrer assign :

1. These bills present no question which a court of equity can determine, because they undertake to subject to the creditors of a municipal corporation the streets, wharves, public squares, and other property held by it for purposes of government, the same not being subject to creditors of such municipal corporation.

2. Because the bills seek to seize, collect, and apply, by a receiver of the court, the uncollected revenues of said municipality which were imposed for purposes of government.

3. That if the act of the legislature of Tennessee passed 29th January, 1879, by which the charter of said coporation was abolished,
429 is valid, then said revenues and said public property are not assets or effects of said extinct municipality, to which creditors are entitled and which a court of equity can seize and apply to the creditors of such dissolved corporation, as the bills in these cases seek to do.

4. That a court of equity cannot administer for the benefit of the creditors of a corporation created solely for purposes of government as this was, any strictly private property that such corporation may own at its dissolution.

5. That these bills cannot be maintained because, upon the repeal of the charter of said corporation by the act of Jan'y 29th, 1879, all revenues levied for the support of such corporation as a local government fell with said corporation, and can only be collected and disposed of by the legislature of the State of Tennessee; and that disposition has been made of such revenues by acts of the general assembly of the
430 State of Tennessee, on the 29th Jan'y, 1879, and 13th day of March, 1879, which are exclusive, and the only way which said revenues can be collected or lawfully disposed of.

6. That these bills cannot be maintained because they propose for the court, by receiver, to collect taxes imposed for purposes of government, thus appointing a tax collector, which courts of equity have no power to do, and thereby displacing the officer provided by the State for that purpose.

7. That the back tax is levied by the municipal authorities of the city of Memphis whilst a corporation, and now unpaid, are not of the character of private debts due said corporation, but are public exactions assessed by political power, and cannot be diverted from public purposes except by the acts of the State government.

8. That the revenues and taxes assessed for general purposes
431 of government, and not for creditors, cannot, by virtue of any authority existing in or to be exercised by courts, be collected for any other purpose than that for which they are assessed, or diverted from the purpose for which they are so assessed and collected; the only power existing to make such diversion, if such power exist at all, being vested in the legislature of the State.

9. That no trust to pay creditors can be impressed upon taxes levied and collected or to be collected in trust & applied to other specific purposes, unless the power to do so is conferred upon the courts by the legislature.

10. That these bills ask that the court assess the private property of the inhabitants of the said extinct municipality to pay the claims of complainants, which would be the levy of taxes, and the exercise of a legislative and not a judicial function.

432 11. That the act abolishing the charter of the city of Memphis is a valid enactment, leaving the creditors without remedy save such as the legislature of the State may see fit to provide; the remedy of creditors and their relief being in the legislature and not in the courts.

12. That this court has no power under these bills to appoint a receiver, for any of the purposes of the bills, and especially has no power to take charge of the said public property, and the said public revenue, and to subject the same to creditors by means of a receiver, to the displacement of the custody and control of the State over the same, for such purposes as the State may see fit to devote them.

13. That the bills cannot be maintained for other reasons apparent upon their face.

14. There is no equity on the face of the bills.

433 Wherefore defendants pray judgment of the said bills that the same be dismissed.

GANTT & PATTERSON,
McKISICK & TURLEY,
J. B. HEISKELL,
Sol's for Def'ts.

Geo. Gantt, one of the counsellors for the deft's in the above stated cause, certifies that, in his opinion, the foregoing demurrer is well founded in point of law.

GEO. GANTT.

D. F. Goodyear, one of the defendants in the foregoing demurrer, makes oath in due form that the said demurrer is not interposed for delay.

D. F. GOODYEAR.

Subscribed and sworn to before me this 23d day of May, 1879.
H. E. ANDREWS, *D. C.*

434 (Endorsed as follows:) 322. U. S. circuit c't. W. D. T. Robt. Garrett & Sons et als. vs. The City of Memphis. Demurrer of D. F. Goodyear et als. Filed May 23, 1879. H. E. Andrews, D. C.

435 Consolidated causes.

ROBERT GARRETT & SONS & OTHERS *vs.* THE CITY OF MEMPHIS & OTHERS. } No. 322.

HOPKINS LOUDON *vs.* THE CITY OF MEMPHIS & OTHERS. } No. 323.

THE AHRENS MANUFACTURING COMPANY *vs.* THE CITY OF MEMPHIS & OTHERS. } No. 324.

TALLMADGE E. BROWN
vs.
THE CITY OF MEMPHIS & OTHERS. } No. 326.

FAIRMAN ROGERS & OTHERS
vs.
THE CITY OF MEMPHIS & OTHERS. } No. 327.

The defendant John R. Flippin appears, and, by the leave of the court, withdraws his answer herein and adopts the demurrer filed by the other defendants, and elects to stand by such demurrers.

436 And thereupon, by the consent of the plaintiffs, the orders pro confesso as to the defendants who have filed demurrers, but not as to any others, are hereby set aside, and the said demurrers so filed are ordered to stand for argument.

(Endorsed as follows:) 322, 323, 324, 326, 327. Consolidated. Robert Garrett & Sons et als. vs. The City of Memphis et als. Order permitting Flippin to withdraw answer and demur and setting aside pro confesso as to demurrants. Ent. 28 May, 1879. M. B. No. 6, page 17.

437 In the circuit court of the United States of America, in the sixth circuit, sitting at Memphis, in the western district of Tennessee, May term, A. D. 1879. In equity.

On this the 29th day of May, 1879, being one of the days of the May term, 1879, of said court. Present and presiding, the honorable Jno. Baxter and E. S. Hammond, judges.

ROBERT GARRETT & SONS ET AL.
vs.
THE CITY OF MEMPHIS ET AL. } No. 322.

HOPKINS LOUDON
vs.
THE CITY OF MEMPHIS ET AL. } No. 323.

TALMADGE E. BROWN
vs.
THE CITY OF MEMPHIS ET AL. } No. 326.

438 THE AHRENS M'N'F'G CO.
vs.
THE CITY OF MEMPHIS ET AL. } No. 324.

FAIRMAN RODGERS ET AL.
vs.
THE CITY OF MEMPHIS ET AL. } No. 327.

These respective causes are bills in equity in the names of and on behalf of judgment creditors of the city of Memphis, a municipal corporation which was created under the public and private statute laws of the State of Tennessee, situated in Shelby County of said State, the claims of said several complainants being of the nature and kind as set out in the several bills original, amended and supplemental, seeking collections of their several claims herein against said city of Mem-

439 phis, John R. Flippin as mayor of said municipal corporation,

and other defendants described in the bills as members of the general council of said corporation, and others described in the bills as officers of said corporation, and against Minor Meriwether as receiver and back tax collector of the delinquent taxes in said corporation, and against Joseph R. Williams, William F. Hardin, Jno. B. Hill, who owe past due taxes to the city of Memphis, &c., the said various defendants having appeared by counsel, and the said Jno. R. Flippin, late mayor, &c., and the other defendants who are described as members of the general council and officers of said corporation, having filed their demurrer herein, assigning fourteen cases of demurrer, seriatum, and the said Minor Meriwether having filed his demurrer assigning seventeen
440 causes of demurrer, seriatum, and the said Joseph R. Williams, William F. Hardin, and Jno. B. Hill having filed their demurrer assigning four causes, to which the several complainants filed their joinder in demurrer of demurrer seriatum, and all the causes having been consolidated by a decree entered herein at a former term of this court, and the same coming on to be heard together as consolidated causes on the original amended and supplemental bills, and the several demurrers thereto, and the joinder in demurrer by the several complainants; and after argument on the *the* several demurrers, it occurred as a question—

1st. Whether, inasmuch as the first of the original bills filed in these consolidated cases was filed in this court prior to the 29th of Janu-
441 ary, 1879, the date of the act of the general assembly of the State of Tennessee repealing the charter of the city of Memphis, this court had or has any jurisdiction to seize and impound the assets, revenues, and properties of the corporation in being, described in complainants' bill, and to place those assets, revenues, and properties in the hands of a receiver appointed by the court to collect, administer, and disburse the same in the payment of creditors of such corporation. On which question the opinions of the judges were opposed.

2nd. And on the said argument it also occurred as a question whether the act of the general assembly of the State of Tennessee, entitled "An act to repeal the charters of certain municipal corporation, and to remand the territory and the inhabitants thereof to the
442 government of the State," passed January 29th, 1879, and approved January 31st, 1879, and which act in terms, as shown therein, repealed the charter and all laws incorporating the city of Memphis, was and is a valid law, or whether the said act is contrary to the constitution of the State of Tennessee or to the Constitution of the United States as against creditors holding bonds and debts contracted prior to the repeal. On which question the opinions of the judges were opposed.

3rd. And on the said arguement it also occurred as a question whether his court has jurisdiction to seize & impound and administer the assets, properties, & revenues of said municipal corporation, when it appeared, as it does by the pleadings in this cause, that the mayor & other
443 officers of said municipal corporation had abandoned their offices and abandoned their duties, and where it also appeared, as it does by the pleadings in this case, that the general assembly of the State has passed a series of these acts, one repealing the charter of Memphis; the second, creating a taxing district in the same ter'itory and providing a government therefor; and the third, to collect and dispose of the taxes assessed for municipal corporations in this State, &c., being ch. 10, 11, & 92, of the act of 1879. On which question the opinions of the judges were opposed.

4th. And on the said argument it also occurred as a question whether if the act of the general assembly repealing the charter of the city of Memphis be valid, the effect thereof was to extinguish all claims, debts, dues, and demands to and from said municipal corporation,
444 including the claims of the various complainants in these causes. On which question the opinions of the judges were opposed.

5th. And on the argument it also occurred as a question, whether if said act repealing the charter be declared valid, and that the effect thereof was not to extinguish all claims, debts, dues, demands to and from said municipal corporation, has this court jurisdiction to collect the taxes which had been lawfully assessed by said municipal corporation and due before the repeal of its charter, but which have not been collected. On which question the opinions of the judges were opposed.

6th. And on said argument it also occurred as a question, whether, if this court has jurisdiction to collect back or delinquent taxes, it
445 can do so by directing its receiver to sue the delinquent taxpayers, and if so, in what court, State or Federal, must such suits be brought, or can the court, by proceeding in the nature of garnishment, require the delinquent taxpayers to come before the court and pronounce judgment against each for the amount found to be due. On which question the opinions of the judges were opposed.

7th. And on said argument it also occurred as a question, whether this court has jurisdiction to enforce the lien on real estate for taxes which the said municipal corporation possessed by proceeding in these causes or otherwise. On which question the opinions of the judges were opposed.

8th. And on said argument it also occurred as a question, whether
446 upon the entire record this court has jurisdiction to entertain the bills and grant any relief to the complainants. On which question the opinions of the judges were opposed.

9th. And on the said argument it also occur'ed as a question whether after the taxes already levied and uncollected, due said corporation, and the other property named in these bills shall have been assertained to be insufficient to pay all the creditors of said city, that then this court has power to bring in all or any part of the inhabitants and corporators within the limits of said dissolved corporation by process, and make assessment against them or their property to pay the balance of entire debt found owing from said corporation pro rata and render judg-
447 ments and decrees against each of them for the pro rata share or amount found due from said dissolved corporation, and enforce liens against specific property against which taxes shall have been levied; on which question the opinions of the judges were opposed.

10th. And on the said argument it also occur'ed as a question whether where the charter of a municipal corporation has been repealed the creditors of such municipal corporation have a right to any relief, except such as the State, through and by its legislative enactments, may afford to such creditors; on which question the opinions of the judges were opposed.

13th. On said argument it also occur'ed as a question whether the 4th section of the act of the legislature of the State of Tennessee, approved Jan'y 31st, 1879, chapter 10, acts 1879, repealing the charter of
448 the city of Memphis, and 14th section of an act of the legislature of the State of Tennessee, approved on the 31st day of January, 1879, being chapter 11 of the acts of said State for 1879, and act of the legislature of the State of Tennessee, approved March 13th, 1879, being chapter 92 of the acts of said legislature of 1879, and particularly sections 4, 5, 6, 7 and sections 11 & 13 of said act as far as complainants

are concerned, and these creditors who have made themselves parties, and the receiver of this court who was appointed before said act was passed, are in violation of Constitution of the United States and the State of Tennessee, and void; on which question the opinions of the judges were opposed.

Whereupon, on motion of the defendants, by their counsel, that
449 the points on which the disagreement hath happened may during the term be stated, under the discretion of the judges, and certified under the seal of the court to the Supreme Court, to be finally decided, it is ordered that the foregoing state of the pleadings and the questions on which the disagreement of opinion hath happened, which is made under the direction of the judges, be certified according to the request of the defendants by their counsel and the law in that case made and provided.

It is further ordered that a copy said several bills, original, amended, and supplemental, and the several demurrers of the said several defendents thereto, and the former decrees and pro confessoes be also made part of the transcript certifying said questions.

JNO. BAXTER,
U. S. Circuit Judge for the 6th Circuit.
E. S. HAMMOND,
U. S. District Judge.

450 (Endorsed as follows:) Nos. 322, 323, 324, 326, 327, consolidated. Garrett & Sons et al. vs. City of Memphis et al. Certificate of division on demurrers. Ent. 28th May, 1879, M. B. No. 6, p. 25.

451 ROBERT GARRETT & SONS ET AL.
vs.
THE CITY OF MEMPHIS ET AL. } No. 322.

HOPKINS LOUDEN
vs.
THE CITY OF MEMPHIS ET AL. } No. 323.

TALLMADGE E. BROWN
vs.
THE CITY OF MEMPHIS ET AL. } No. 326.

THE AHRENS M'F'G COMPANY
vs.
THE CITY OF MEMPHIS ET AL. } No. 324.

FAIRMAN ROGERS ET AL.
vs.
THE CITY OF MEMPHIS ET AL. } No. 327.

These consolidated causes were this day heard on the demurrers of the defendants, Joseph R. Williams, William F. Hardin, John B. Hill, Minor Meriwether, as receiver and back tax collector of the extinct municipality the city of Memphis, D. F. Goodyear, John R. Elippin,
452 W. J. Chase. W. Hewitt, James Elder, Simon Green, H. G. Dent, Marcus Jones, W. N. Brown, J. W. Moores, W. Benjes, George Hissinger, James Bohan, W. P. Proudfit, Charles Quentel, sr., I. N. Snowden, J. W. White, W. H. Bates, M. Selig, L. Lawhorn, P. C. Wood, Andrew Rinkert, Herman Caro, Thomas Boyle, Peter Tracy, W. J.

Crosby, W. O. Harvey, Thomas Barrett, P. M. Patterson, L. D. Grant, Wm. Bradford, composing the general council of Memphis, and the city of Memphis, to the several bills and amended bills and amended and supplemental bills, the order pro confesso, heretofore entered, and the record and proceedings in the cause, and the parties having been heard through their respective counsel, the court is of the opinion that the said demurrers are not well taken and overrules the same.

And thereupon the defendants, electing to rest their said de-
453 murrers and to make no other or further defense, the court orders, adjudges and decrees that the plaintiffs in the said suits, and the other creditors who have made themselves parties under the leave of the court heretofore given, and the other creditors who may hereafter make themselves parties as permitted by the court, do have and recover of and from the city of Memphis the several debts due them respectively, the amounts of which will hereafter be fixed by the court, and that all the assets and property of every description, heretofore belonging to the city of Memphis, or so much thereof as may be necessary for the purpose, including taxes heretofore assessed and remaining unpaid and due the city, be applied to the payment of such debts.

And to that end the court orders adjudges and decrees that T.
454 J. Latham, esq., the receiver heretofore appointed herein, do retain possession of all the assets and property, and books, papers and writings heretofore placed in his hands as such receiver, to be disposed of only as the court may order in the progress of this suit, and that he proceed to collect the said assets and property in the manner directed by the former orders of the court for the payment of the said debts.

And it is further ordered, adjudged and decreed that the defendant, Minor Meriwether, as receiver and tax collector as aforesaid, be and he is hereby perpetually enjoined from taking possession of, collecting, or attempting to collect, sueing for, or in any way interfering with said assets and property and books, papers and writings so in the possession of or to be collected by the said Latham as such receiver.

455 The court will settle the priorities of the several creditors and their rights to the several funds involved herein as the questions may arise in the progress of the cause.

And the court orders, adjudges, and decrees that all the property within the limits of the territory of the city of Memphis is liable and may be subjected to the payment of all the debts aforesaid owing by the said city, and that such liability shall be enforced hereafter from time to time in such manner as the court in these suits may order and direct.

And the court orders, adjudges, and decrees that T. J. Latham, the receiver aforesaid, recover of the defendant, Joseph R. Williams, the sum of six thousand eight hundred and forty-three dollars and forty-six cents ($6,843.46), being the amount of taxes due by him to the city of
456 Memphis, as appears in the record; and of the defendant, William F. Hardin, the sum of nine hundred and fifty-four dollars and eighty-five cents ($954.85), being the amount of the taxes due by him, as appears as aforesaid; and of the defendant, John B. Hill, the sum of six thousand six hundred thirty-eight dollars and thirty-eight cents ($6,638.38), being the amount of taxes due by him, as likewise appears.

It is further ordered that executions, as in judgments at law, issue on the said several decrees, and also that the right be, and the same is hereby, reserved to enforce in this suit in the proper way all liens that

may exist on any and all property for the payment of the said sums or any part thereof.

457 It is further ordered that the plaintiffs recover of the defendants, whose demurrers have been overruled as aforesaid, all the costs occasioned by their defenses, to be taxed by the clerk, and that executions issue therefor; from which decree the several defendants who have filed demurrers herein, viz, The City of Memphis, John R. Flippin, D. F. Goodyear, W. J. Chase, W. Hewett, James Elder, Simon Green, H. G. Dent, Marcus Jones, W. N. Brown, J. W. Moores, W. Renjis, Geo. Hassinger, James Bohan, W. P. Proudfit, Charles Quentel, sr., I. N. Snowden, F. H. White, W. H. Bates, M. Selig, L. L. Lawhorn, P. O. Wood, Andrew Renkert, Herman Caro, Thomas Boyle, Peter Tracy, W. J. Crosbie, W. O. Harvey, Thomas Barrett, P. M. Patterson, L. D. Grant, Wm. Redford, comprising general council of Memphis; J.

458 R. Williams, J. B. Hill, W. F. Hardin, and Minor Meriwether as receiver and back-tax collector, who pray an appeal to the next term of the Supreme Court of the United States at Washington, which is granted upon the defendants executing bond herein in the penal sum of five hundred dollars, conditioned for the payment of all costs, as required by law, and thirty days is hereby granted defendants within which to execute said bond, provided the present term of this court lasts so long, otherwise to be executed prior to the adjournment of the present term.

(Endorsed as follows:) 322, 323, 324, 326, 327. Consolidated. Garrett & Sons et als. vs. The City of Memphis et als. Ent. 28 May, 1879. M. B. No. 6, p. 21.

459 Supreme Court of the United States.

Know all men by these presents that we, Minor Meriwether, as receiver and back-tax collector of the extinct municipality of the city of Memphis, principal, and C. W. Frayzer , as sureties, are held and firmly bound unto Robert Garrett & Sons, and others, and to T. E. Brown, Hopkins Loudon, Fairman Rogers, and others, and to the Ahrens Manufacturing Company, the complainants named in the consolidated bills, numbered 322, 324, 323, 326, and 327, in equity, in the United States circuit court for the western district of Tennessee, in the sum of two hundred and fifty dollars, to be paid to the said Robert Garrett & Sons and the other complainants mentioned in said consolidated bills, their executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us jointly

460 and severally, and our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seal and dated this day of June, 1879.

Whereas the above named Minor Meriwether, as receiver and back tax collector of the extinct municipality the city of Memphis, has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above recited consolidated causes on his motions made in said causes, to vacate, annul, and set aside the decree appointing T. J. Latham receiver; and to vacate, annul, set aside, or modify so much of the decree appointing T. J. Latham receiver in these causes, as authorized and directs him to proceed to collect delinquent taxes due to said municipal corporation, by the circuit court of

461 the United States fo' the western district of Tennessee, in equity.

Now, therefore, the consideration of this obligation is such, that if the above named Minor Merriweather, as receiver and back tax collec-

tor, shall prosecute his said appeal to effect or answer all costs that may be adjudged against him, if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

MINOR MERIWETHER, [SEAL.]
Receiver and Back Tax Collector of the extinct Municipality, the City of Memphis.
C. W. FRAZER. [SEAL.]

This bond acknowledged before me this June 12, 1879.
E. S. HAMMOND, *J.*

Bond approved.
E. S. HAMMOND, *J.*

462 (Endorsed as follows:) Nos. 322, 323, 324, 326, 327, consolidated. Circuit court of the United States, western district of Tennessee. Robert Garrett & Sons and others vs. The City of Memphis et al. Appeal bond to the United States Supreme Court.

463 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1879, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 20 day of June, A. D. 1879, in the following cause, to wit:

ROBERT GARRETT & SONS ET ALS., PLAINTIFF,
vs.
CITY OF MEMPHIS, DEFENDANT. } No. 325.

HOPKINS LOUDEN
vs.
CITY OF MEMPHIS. } No. 323.

AHRENS M'F'G CO.
vs.
CITY OF MEMPHIS ET ALS. } No. 324.

TALLMADGE E. BROWN
vs.
CITY OF MEMPHIS ET ALS. } No. 326.

FAIRMAN ROGERS ET ALS.
vs.
CITY OF MEMPHIS ET ALS } No. 327.

464 Be it remembered, that this day the defendants presented in open court their appeal bond for the approval of the court, when it appearing that the same was satisfactory to opposing counsel, and it appearing that the same is a good and sufficient appeal bond, the same is approved by the court and ordered to be filed.

465 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1879, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 7 day of July, A. D. 1879, in the following cause, to wit:

Consolidated cases.

ROBERT GARRETT & SONS ET ALS., PLAINTIFF,
vs.
CITY OF MEMPHIS ET AL., DEFENDANT. } No. 322.

HOPKINS LOUDEN
vs.
CITY OF MEMPHIS ET AL. } No. 323.

TALLMADGE E. BROWN
vs.
CITY OF MEMPHIS ET AL. } No. 326.

THE AHRENS M'F'G CO.
vs.
CITY OF MEMPHIS ET AL. } No. 324.

FAIRMAN ROGERS ET AL.
vs.
CITY OF MEMPHIS ET AL. } No. 327.

466 Now come the plaintiffs and dismiss this cause as to defendant, W. P. Wilson, and by consent defendant Wilson is adjudged to pay the costs of the service of the summons on him and the entry of this order, and this order is entered now as of the 26th day of May, 1879.

(Indorsement on cover:) No. 916. Minor Meriwether, receiver, &c., of the city of Memphis, et al., appellants, vs. Robert Garrett & Sons et al. W. Tennessee C. C. U. S. Filed 11th October, 1879.

REC. 916—8

SUPREME COURT OF THE UNITED STATES.

No. 916.

MINOR MERIWETHER,

RECEIVER AND BACK-TAX COLLECTOR OF THE CITY OF MEMPHIS, ET AL., APPELLANTS,

VERSUS

ROBERT GARRETT & SONS,

ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE, IN EQUITY.

BRIEF OF MINOR MERIWETHER,

OF COUNSEL FOR APPELLANT.

MEMPHIS, TENN.
Price, Jones & Co., Printers, Binders, &c., 12 Jefferson Street.
1879.

SUPREME COURT OF THE UNITED STATES.

No. 916.

MINOR MERIWETHER,

RECEIVER AND BACK-TAX COLLECTOR OF THE CITY OF MEMPHIS, ET AL., APPELLANTS,

VERSUS

ROBERT GARRETT & SONS,

ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE, IN EQUITY.

BRIEF OF MINOR MERIWETHER,

OF COUNSEL FOR APPELLANT.

MEMPHIS, TENN.
Price, Jones & Co., Printers, Binders, &c., 12 Jefferson Street.
1879.

STATEMENT OF THE CASE.

These are in the nature of garnishment bills against the City of Memphis, its former officers, Joseph Uhl, the Clerk of the Circuit Court of Shelby county, Tennessee; George B. Fleece, the Trustee and Tax Collector of Shelby county; the German National Bank; certain inhabitants, tax-payers of Memphis, and Minor Meriwether, as State Receiver and Back-Tax Collector of Memphis, to enforce the collection of sums alleged to be due from said city to the plaintiffs, and to restrain the said Meriwether from collecting the back-taxes imposed by the former authorities of Memphis, and remaining unpaid at the date of repeal of its charter.

By act passed 29 January, 1879, approved 31 January, 1879. Chapter 10, the Legislature of Tennessee repealed all former acts incorporating the city of Memphis, in whatever form, including the several acts cited in the amended bill of Garrett & Sons; all of which acts, however, had been repealed years before this date; abolished all offices held thereunder; repealed the charters of all municipal corporations having 35,000 inhabitants or over, Memphis being one of them, and remanded the territory and inhabitants thereof to the government of the State; abolished all offices held thereunder, and forbade the exercise of any of the powers or functions thereof; withdrew all power of taxation for any purpose whatsoever, and reserved it to the Legislature;

and transferred all public buildings, squares, promenades, wharfs, streets, fire engines, and all other property, real and personal, previously used for municipal purposes, to the custody and control of the State, to remain public property for the uses and purposes to which it had been hitherto applied.

By a simultaneous act, chapter 11, sec. 14, being an act to establish Taxing Districts and provide the means of local government for the same, the Legislature transferred all said public property to a Board of Commissioners, to remain public property, for the same uses and purposes; and vested in the State all indebtedness for taxes or otherwise, due to said municipalities, to be collected and disposed of for the settlement of the debts of the extinct municipalities, as thereafter provided by law. This section 14 was subsequently (12 March, 1879) amended by section 5 of chapter 84, 1879, but not in respect to the above provisions. In pursuance of the purpose to collect said delinquent taxes for the settlement of the debts of said extinct municipalities, the Legislature by act, chapter 92, passed 13 March, 1879, provided for the appointment of a Receiver and Back-Tax Collector, charged with the duty of collecting all unpaid taxes imposed by said municipalities up to the time of the repeal or surrender of their charters.

There was due in Memphis a large sum of special and general taxes—such as taxes levied to pay certain specified creditors, a special tax to pay interest upon bonds, a special sinking fund tax, a school tax, a wharfage tax, a tax upon merchants to pay police and firemen, a tax to pay interest upon bonds issued to certain railroads, and a tax for general purposes of government.

For the purpose of collecting said taxes, section 4 of the act, chapter 92 of 1879, authorized said officer to file in the Chancery Court, a general creditors' bill in the name of the State, in behalf of all creditors, against all delinquent tax-payers—the taxes as collected to be paid into the State Treasury for the benefit of creditors, and to be paid out to those entitled to receive them, as adjudged by the Chancery Court, upon the warrant of the Receiver, countersigned by the Chancellor.

The Receiver is required, in paying into the Treasury, to distinguish the sources, whence derived, showing the amount from each special and general tax, so that the same may be kept separate, and be paid out to creditors according to any priority, lien or equity which may be declared by the Chancery Court in favor of such creditor. See sections 2 and 7 of said act.

Section 3 of said act made it the duty of said officer to take possession of all books, papers and documents pertaining to the assessment and collection of said taxes.

Said officer is authorized to receive the indebtedness of the city in payment of said taxes, in certain installments, and at certain rates, provided, always, no rights of creditors are thereby interfered with or impaired. See sections 5 and 6 of said act. The several acts, and others referred to, are appended to this brief.

Under said act, the Governor, on 14 March, 1879, appointed Minor Meriwether, Receiver and Back-Tax Collector for the City of Memphis, who qualified and entered on the duties of his office, and on 31 March, 1879, commenced proceedings in the Chancery Court for the collection of said taxes. R. 90.

There are five bills in this cause: The first, Garrett

& Sons, was filed on 28 January, 1879, against the City of Memphis alone, before the repeal of the Charter, and after the repeal, viz: 7 February, 1879, was amended, the former city officers, the County Tax Collector, the Clerk of the Shelby Circuit Court, and the German National Bank being added as defendants. R. 6.

Another of these bills, that of Hopkins Louden, was filed against the city alone, before repeal of the Charter, and after the repeal was amended, without making other parties. R. 22, 29 and 30. All the other bills were filed after the repeal of the Charter, and all the bills were subsequently consolidated and ordered to be heard together, and on same day, 12 February, 1879, Latham was appointed Receiver by the court and vested with the sweeping and plenary powers claimed in said bills. R. 63.

On 10th April, 1879, an amended and supplemental consolidated bill was filed in four of the cases, viz: Garrett & Sons, Louden, Brown, and Rogers, making said Meriwether a party defendant—seeking to enjoin him from exercising the duties of his said office of Receiver and Back-Tax Collector. It also made sundry individuals parties defendant, who were alleged to be indebted to the city on account of back taxes; and sought against them personal judgments for the amounts alleged to be due from them; and also sought to subject the property of said defendants, upon which the taxes were alleged to be due. The bill of the Ahrens Manufacturing Co., R. 32, was filed against Fleece, Goodyear, Neely, and Newsom only, and seeks no relief against the city or other defendants. No Receiver was asked for, and no notice of application for

Receiver was given; and the plaintiff in that bill is not a party to the consolidated bill.

The plaintiffs in said bills claim to be judgment creditors of the City of Memphis, and some of them to hold in addition to their judgments, past due bonds and coupons of said city, which they also seek to collect. They claim severally to have had special taxes levied by the former authorities of Memphis, under writs of mandamus, some from the Federal Courts, some from the State Courts, for the payment of their respective judgments, or the most of them, and that a large part of said special tax levies remain uncollected, and which they claim as a trust fund for the payment of said judgments.

They seek to subject to the payment of their alleged claims not only the said special mandamus taxes, but all other uncollected taxes, whether levied for other special purposes or for the general purposes of municipal government.

They claim the right to collect through the United States Circuit Court, all said back taxes, by making the individual tax-payers of the city alleged to be so indebted, defendants—the subjection of their property upon which the taxes are alleged to be due, and its sale under execution, barring the right of redemption, and also the recovery of personal judgments against them, enforcible by execution.

They also seek to subject to the payment of said claims, all the property of the city, real and personal, including its public buildings, streets, alleys, parks, promenades, wharfs, landings, engine-houses, fire

engines, hose and carriages, horses, wagons, and all other property used for public purposes, and have levied attachments thereon. They claim further that when these resources are exhausted, the Circuit Court may levy taxes or assessments upon the property of the inhabitants, and collect the same through the officers of the Court, sufficient to pay any balance found to be due the creditors. R. 17–20.

They also claim to hold unmatured bonds and coupons of said city, and to subject the property of the inhabitants, through the orders and processes of the court to their payment as they become due, retain the cases in court for an indefinite period for that purpose. They treat the city as a dead man, its former officers as trustees, all the inhabitants as its debtors to the full amount of the city's debts, and ask the court to collect and administer the estate through its own officers.

The bill of Garrett & Sons was first filed in the Chancery Court of the State, where it is now pending, under the presumed authority of the act of the Legislature of 19 March, 1877, Chapter 71, hereto appended.

Such is a brief statement of the scope of these very lengthy and extraordinary bills.

The decree entered 12 February, 1879, appointing Latham Receiver, directed him to take possession of all the assets and property of the city, including real and personal property and debts and taxes due to it, except the taxes for 1878, and the school tax, and except the public highways, parks, landings, engine-houses, fire engines, and other property used by the fire and police departments, which excepted articles were excluded from the operation of the decree till the

further order of the court. He was also directed to take possession of all the tax-books, papers, office furniture, etc., of the city, except the tax-books of 1878, which were to remain in the hands of Fleece, the County Tax-Collector, and ex-officio City Tax-Collector before the repeal of the charter.

The Mayor, Treasurer, Sinking Fund Commissioner, and other city officers; the County Tax-Collector, the Shelby County Circuit Clerk, and the German National Bank, and all other persons, were each ordered to deliver to said Latham, Receiver, all moneys and property in their custody belonging to said city, except money collected from school tax; and the said County Tax-Collector, Fleece, was ordered to pay to said Latham all taxes thereafter collected by him for the city for 1878, except the school tax; and said Uhl, Circuit Court Clerk, was ordered to pay to said Latham all taxes thereafter received by him for the city, in redemption of property, except school taxes. The said Latham was ordered to take possession of all property which the city had become the owner of, by purchase at sales for non-payment of taxes, and to rent the same from month to month, and hold the same subject to the order of the court. He was further directed to collect, in lawful money of the United States, all taxes appearing to be due on the tax-books, and for that purpose, he is authorized to bring actions at law or suits in equity, against any persons owing any debt to the city, or appearing on said tax-books, indebted to the city, and in such suit, to enforce any specific lien on any property for the payment of said taxes, and have the same sold. He was authorized to employ the process of garnishment, and to bring the parties owing said taxes, by

petition in this cause, into the U. S. Circuit Court, or sue them at law in said court, or sue them at law or in equity in the State Courts, or to make himself party to any suits pending in said courts for collection of said taxes; and he is authorized to employ all necessary clerks and assistants for said work, and one or more attorneys to prosecute said suits, and to incur all necessary expenditures for his said office of Receiver. R. 63–67.

This decree, which is, to all intents and purposes, a final decree, was entered 12 February, the same day the process in the Rogers bill was served, and before the return day of any of the writs, and before any of the defendants had an opportunity to be heard.

The defendant, Meriwether, Receiver and Back-Tax Collector, moved the court to vacate the order appointing Latham, Receiver, for the reasons, among others:

1. That the act of 29th January, 1879, section 14, chapter 11, transferred all the assets and back taxes to the State for the payment of the debts of the city, and he alone is authorized by the law to collect and administer them, under the direction of the Chancery Court.

2. This court has no jurisdiction to enforce the collection of delinquent taxes, from inhabitants of said municipal corporation.

3. These bills are in the nature of garnishments against delinquent tax-payers, and said revenues or taxes not being subject to execution, are not subject to a garnishment bill in the nature of an execution, or other proceeding in this court.

The motion founded on these and other reasons stated in the record was heard by Hon. John Baxter, Circuit

Judge, and the Hon. E. S. Hammond, District Judge, who were divided in opinion; the latter sustaining the motion, the former being of the opinion the objections were not well taken, and the motion was accordingly overruled, and the division of opinion certified. From the decree overruling said motion the defendant Meriwether appealed.

The defendant, Meriwether, as Receiver and Back-Tax Collector, filed sundry causes of demurrer, among others, one to the jurisdiction of the subject matter, and one to the jurisdiction of the court over municipal corporations. The other individual defendants and the city, and the former officers of the city, who were made defendants, also filed sundry causes of demurrer—Record, pp. 106–105; all of which were heard together by said Judges; and in the argument thereon, a division of opinion arose between the Hon. John Baxter, Circuit Judge, and the Hon. E. S Hammond, District Judge, upon the various questions raised by the demurrers; which questions are stated in the Record, and the division certified; the Hon. John Baxter sustaining the powers claimed for the court by the plaintiffs in their several bills; and the Hon. E. S. Hammond being opposed. The demurrers were accordingly overruled, and defendants standing upon their demurrers, a final decree was rendered in accordance with the opinion of the presiding Judge, Baxter, under section 650 R. S. R. 107–109.

Said final decree, R. 109, entered 28 May, 1879, adjudges to plaintiffs and to all others who may hereafter make themselves parties, the recovery from the city of Memphis, of the several debts due them respectively, the amounts thereafter to be determined by the court;

and that all the assets and property of every description heretofore belonging to the city, including taxes heretofore assessed and remaining unpaid, shall be subjected to the payment of said debts; and to that end, said Latham, Receiver, is directed to retain possession of all said property and assets, and to collect said assets, property and taxes, in the manner directed under the order of the court appointing him Receiver. And the said Meriwether, as Receiver and Back-Tax Collector of the extinct municipality, the city of Memphis, is perpetually enjoined from taking possession of, collecting, or attempting to collect, suing for, or in any way interfering with said assets, property, books, papers, etc., in the possession of, or to be collected by, said Latham as Receiver.

All the property of the inhabitants within the limits of the territory of Memphis is, by said decree, adjudged liable and subject to the payment of all the debts owing by said city; the liability to be enforced in such manner as the court may hereafter direct. It is further decreed that Latham (who, it will be observed, is not a party to these suits,) recover of the defendants, Williams, Hill and Harden, certain sums specified, being the amount of taxes alleged to be due by them, respectively, to said city, and that executions issue therefor, as on judgments at law, and the right is reserved to enforce in this suit all liens on any and all property for the payment of the said sums.

Decree for costs occasioned by their defenses against defendants, whose demurrers were overruled.

From this decree defendants appealed, and the case is now before this court for re-examination and reversal upon the entire record.

ASSIGNMENT OF ERRORS.

The Circuit Court erred in holding—

1. That it has jurisdiction of municipal corporations.

4 Demurrer, Record, 100.

2. That it may compel municipal corporations, by writ of mandamus, to levy and collect taxes for the payment of its debts. 13 Demurrer, R. 101.

3. That it may seize and impound the assets, revenues and property of a municipal corporation in being, place them in the hands of a receiver appointed by the court to collect, administer and disburse the same in payment of creditors of the corporation.

1 Division, R. 107.

4. That where the Mayor and other officers of a municipal corporation have abandoned their offices and their duties, and where the Legislature by a series of acts (chapters 10, 11 and 92 of 1879,) has repealed the charter of such corporation, vested all uncollected taxes and property in the State in trust; provided a taxing district government in the same territory; and appointed a receiver to collect the taxes assessed for such extinct corporation remaining uncollected at the date of its repeal, and dispose of the same for the benefit of its creditors, the Circuit Court may, notwithstanding, seize, impound, and administer the assets, property and revenues of said extinct corporation.

3 Division, R. 107.

5. That it may appoint a receiver to collect the taxes imposed for the purposes of the corporate government, such as police, fire, gas, public works, hospitals, salaries, general expenses, etc., by a municipality whose charter has been repealed, and apply them to the payment of the creditors thereof. Decree, R. 63.

6. That it may appoint a receiver to collect the special taxes imposed for sinking fund and interest upon bonds by such extinct municipality, and apply them to the payment of the creditors thereof.
Decree, R. 63.

7. That it may appoint a receiver to collect the special taxes imposed by such extinct municipality, before the repeal of its charter, in obedience to writs of mandamus from the courts of the State and the Circuit Court of the United States, for the payment of judgments recovered in said courts. Decree, R. 63.

8. That the Circuit Court may collect said back or delinquent taxes, by directing its Receiver to sue the delinquent tax-payers, in the courts of the State, or bring them into said Circuit Court by proceedings in the nature of garnishment, or by petition, and pronounce judgment against each, for the amount found to be due. 6 Division, R. 108.

9. That it may enforce the lien on real estate for taxes, which the municipal corporation possessed, by proceedings in these causes, or otherwise.
7 Division, R. 108.

10. That it may perpetually enjoin and restrain the defendant, Meriwether, the Receiver and Back-Tax Collector appointed by the Governor of the State—an

officer of the State—from taking possession of said tax-books and property, and from suing for or collecting said taxes, as he was authorized and required by the law of the State to do. R. 110.

11. That it may command and require the defendant, Fleece, Trustee and Tax-Collector of Shelby county, an officer of the State of Tennessee, to collect and pay over to said Receiver, Latham, all said taxes, special and general, levied by the City of Memphis for 1878, and to pay over to said Latham, Receiver, all the money then on hand, collected on account of said taxes of 1878. R. 64.

12. That it may command and require the defendant, Uhl, Clerk of the Circuit Court of Shelby county, an officer of the State, to pay over to said Latham, Receiver, money on hand, and money thereafter received by him on account of redemption of property sold for taxes due said city. R. 65.

13. That it may subject the revenues levied for purposes of government, and the property used for purposes of government by the late corporation of Memphis, such as squares, market-houses, hospitals, parks, wharfs, engine-houses, fire engines, etc., to the payment of creditors of said corporation.

11 Demurrer, R. 101.
8 Demurrer, R 104.
Final Decree, R. 110.

14. That it may enforce the collection of all said general and special taxes in lawful money of the United States, at one time and immediately, though the laws of Tennessee provide for their payment in the indebt-

edness of said city, and in five annual installments.
R. 65.

15. That all the property within the limits of the territory of Memphis is liable and may be subjected to the payment of all the debts of said city, through the processes and orders of said court, in such manner as the court may order and direct. R. 110.

16. That it may assess, levy and collect taxes on the property of persons, situate within the territory of the late City of Memphis, for the purpose of paying its debts.

10 Demurrer, R. 101.
Decree, R. 110.
Record, 20.

17. That after exhausting said back-taxes and other property of said extinct corporation, it may bring the inhabitants thereof into said court, by process, and make assessments against them, or their property, to pay the balance of the entire debt found owing from said corporation, *pro rata*, and render judgments and decrees against each of them therefor, and enforce the same by liens against the specific property upon which the tax shall have been levied. 9 Division, R. 108.

18. That where the charter of a municipal corporation has been repealed, the creditors thereof are not limited to the relief provided by the legislative enactments of the State, but the Circuit Court of the United States, independently of such enactments, and in disregard thereof, may afford relief in the mode and manner claimed by plaintiffs in said bills, and granted by the court in its orders and decrees in these causes.
10 Division, R. 108.

19. That it may take jurisdiction of a municipal corporation, and allow creditors of said corporation to come into said court, after the repeal of its charter, and sue and recover judgment against the extinct corporation, and subject the property of the inhabitants to its payment. Decree, R. 110.

20. That the acts of the Legislature, chapter 10, passed 29 January, 1879, repealing the charters of certain municipal corporations, etc., is contrary to the Constitution of the State, and of the United States, as against creditors holding bonds and debts contracted prior to repeal. 2 Division, R. 107.

21. That section 4, chapter 10, of acts of Tennessee of 1879, repealing charter of Memphis, and section 14, of chapter 11, of 1879, and chapter 92, of 1879, are in violation of the Constitution of Tennessee, and of the United States, and void as to plaintiffs, and void as to said Receiver, Latham, who was appointed before the passage of said act, chapter 92.
13 Division, R. 108.

22. That a repeal of the charter of Memphis, though constitutional and valid, would not have the effect to extinguish all debts due to, and from, said corporation.
4 Division, R. 108.

23. That if a valid repeal of the charter has not the effect to extinguish the debts due to and from the said corporation, the Circuit Court may seize and collect the taxes lawfully assessed by said corporation, and remaining unpaid at the repeal of the charter.
5 Division, R. 108.

24. That upon the entire record, it had the jurisdic-

tion to entertain the bills and grant the relief sought by plaintiffs. 8 Division, R. 108.

25. The Circuit Court erred in holding that the demurrers of the several defendants were not well taken; and especially, the 1, 4, 5, 8, 9, 10, 11, 12, 13, 14 and 16 demurrers of defendant Meriwether; the 1, 2 and 3 of defendants Williams, et al.; and those of defendants Goodyear, et al.

All these things the Circuit Court held and did, in its decree appointing a Receiver (R. 63); in its decree overruling the motion to vacate the appointment of Receiver (R. 98); in its certificate of division on the argument of the demurrers (R. 106); and in its decree overruling the several demurrers (R. 109).

ARGUMENT.

ERROR 1—JURISDICTION OF MUNICIPAL CORPORATION.

The courts of the United States, Supreme and inferior, are creatures of the Constitution and laws of Congress, made in pursuance thereof. They are courts of limited jurisdiction, and possess the powers conferred by the Constitution and laws of Congress, and none other.

"The powers of the general government are made up of concessions from the several States—whatever is not expressly given to the former the latter expressly reserves. The judicial power of the United States is a constituent part of those concessions. That power is to be exercised by courts, organized for the purpose, and brought into existence by the effort of the legislative power of the Union. Of all the courts which the United States may, under their general powers constitute, one only, the Supreme Court, possesses jurisdiction, derived immediately from the Constitution, and of which the legislative power cannot deprive it. All other courts created by the general government possess no jurisdiction but what is given them by the power that creates them, and can be vested with none, but what the power ceded to the general government will authorize them to confer." 7 Cranch U. S. R., 33.

"Courts created by statute can have no jurisdiction but such as the statute confers." 8 Howard, 449. 97 U S R 649

The Constitution of the United States, art. 3, sec. 2, defining the jurisdiction of the courts in respect to parties, declares that "the judicial power shall extend to * * * *; to controversies between two or more States; between a State and citizens of another

State; *between citizens of different States*; between citizens of the same State, claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens or subjects."

This is qualified by the 11th amendment to the Constitution, which declares "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State."

The act of Congress of 3 March, 1875, 18 U. S. stat., 470, defining the jurisdiction of the Circuit Courts in respect to parties, declares—

"That the Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law, or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of $500; * * * * * in which the United States are plaintiffs or petitioners; or in which there shall be a controversy between citizens of different States; or a controversy between citizens of the same State claiming lands under grants of different States; or a controversy between citizens of a State, and foreign States, citizens or subjects."

Here we have the whole of the constitutional and statutory powers of the Federal Courts, with respect to the parties who may have access to them for purposes of suit.

The Constitution does not authorize, nor has Congress ever attempted to confer jurisdiction upon the Circuit Court, as to any other parties than those here enumerated, viz: The United States, its officers, citizens, and aliens, and banking associations organized under the National banking law. The word "corporation" does not occur in the Constitution, or in the

act defining the jurisdiction of the Circuit Court. For the purposes of this case, the jurisdiction is confined to controversies between citizens of different States, and unless a municipal corporation is a citizen, the Circuit Court has no jurisdiction.

Chief Justice Marshall, in *Marshall* v. *The B. & O. R. R. Co.*, 16 Howard U. S. Reports, 327, speaking of private corporations, said:

"A corporation, it is said, is an artificial person, a mere legal entity, invisible and intangible.

"The inference, also, that such an artificial entity cannot be a citizen, is a logical conclusion from the premises that cannot be denied."

Again, in *The Bank* v. *Deveaux*, 5 Cranch U. S. R., 86 he said:

"That invisible, intangible and artificial being—that mere legal entity, a corporation aggregate, is certainly not a citizen, and, consequently, cannot sue or be sued in the courts of the United States, unless the right of the members in this respect can be exercised in their corporate name. If the corporation be considered as a mere faculty, and not as a company of individuals, who, in transacting their joint concerns, may use a legal name, they must be excluded from the courts of the Union."

Then, with the *argumentum ab inconvenienti*, and the assumption that the State tribunals will not administer the law justly or impartially (16 Howard U. S. R., 329), the court proceeds to overcome the constitutional impediment to their jurisdiction, by treating the corporation aggregate as a mere company of individuals—partners—using a corporate name for the transaction of their joint concerns.

The [redacted] sophistry, by which this conclusion is reached, in reference to private corporations,

cannot be made to apply to a municipal corporation, which is not "a company of individuals who, in transacting their joint concerns, use a legal name." It is not a company of individuals doing a joint business. It has not a single attribute of citizenship. If it were a citizen, it might aspire to office, and become a member of Congress, or a judge of this court, or command armies, or serve as a soldier, or commit treason, and other crimes, and be imprisoned and punished. It can do not one of these things, which all citizens may do. It cannot, by any ingenuity of argument, be tortured into a citizen of one of the States, which it must be, to be suable in the Federal Courts. "It is but part of the machinery employed in carrying on the affairs of the State" (13 Illinois, 30), and can no more be a citizen, than the State itself can be a citizen. It is a part of the government of the State, and, as such, exempt, under the 11th amendment to the Constitution, from the interference or control of the Federal Courts, at the suit of citizens of another State, or citizens or subjects of any foreign State. It may be contended, that this court has ruled otherwise. I admit this court has frequently taken jurisdiction of suits against municipal corporations, but an examination of the cases will show, that the objection to the jurisdiction has never, until now, been placed upon the constitutional ground of want of citizenship. That question, as to municipal corporations, has never been passed upon by this court. The case of *Cowles* v. *Mercer County*, 7 Wallace U. S. R., 118, decided in 1868, appears to be the first case in which the jurisdiction as to municipal corporations was distinctly raised, and that was upon the construction of an Illinois statute, which, the Supreme Court of that

State held, limited suits to the Circuit Court of the county. This court held, that there was nothing in the statute intended to deprive the Federal Courts of the jurisdiction. The question of citizenship under the 3d article, section 2, of the Constitution, was not raised in the case, or noticed by the court; and in no case, since that date, do I find the question determined.

In a long series of decisions, commencing in 1798, with the case of *Bingham* v. *Cabot*, 3 Dallas, 382, and running through—

Turner v. Bank of North America, 4 Dal., 8.
Turner's Admr. v. Enreille, 4 Dal., 7.
Mossman v. Higginson, 4 Dal., 12.
Abercrombie v. Dupins, 1 Cranch, 343.
Wood v. Wagnon, 2 Cranch, 1.
Capron v. Van Noordan, 2 Cranch, 126.
Strawbridge v. Curtis, 3 Cranch, 267.
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Hodgson v. Bowerbank, 5 Cranch, 303.
Corporation New Orleans v. Winter, 1 Wheaton, 91.
Sullivan v. Fulton Steamboat Co., 6 Wheaton, 450.

Robertson v Cease 97 U.S. R 649-1878

"The doctrine is ruled and reiterated that in order to maintain an action in the courts of the United States, under art. 3, sec. 2, of the Constitution, not only must the parties be *citizens* of different States, but this character must be averred explicitly and must appear upon the record and cannot be inferred, and the failure to make the required averment will be fatal to the jurisdiction of the Federal Court either original or appellate."
16 Howard U. S. R., 340.

But what if the Federal Courts have taken jurisdiction of municipal corporations—if wrong, must the wrong be persevered in? Can time, or precedent sanctify wrong? I am sure this court will hold no such doctrine, and in a question involving the construction

cannot be made to apply to a municipal corporation, which is not "a company of individuals who, in transacting their joint concerns, use a legal name." It is not a company of individuals doing a joint business. It has not a single attribute of citizenship. If it were a citizen, it might aspire to office, and become a member of Congress, or a judge of this court, or command armies, or serve as a soldier, or commit treason, and other crimes, and be imprisoned and punished. It can do not one of these things, which all citizens may do. It cannot, by any ingenuity of argument, be tortured into a citizen of one of the States, which it must be, to be suable in the Federal Courts. "It is but part of the machinery employed in carrying on the affairs of the State" (13 Illinois, 30), and can no more be a citizen, than the State itself can be a citizen. It is a part of the government of the State, and, as such, exempt, under the 11th amendment to the Constitution, from the interference or control of the Federal Courts, at the suit of citizens of another State, or citizens or subjects of any foreign State. It may be contended, that this court has ruled otherwise. I admit this court has frequently taken jurisdiction of suits against municipal corporations, but an examination of the cases will show, that the objection to the jurisdiction has never, until now, been placed upon the constitutional ground of want of citizenship. That question, as to municipal corporations, has never been passed upon by this court. The case of *Cowles* v. *Mercer County*, 7 Wallace U. S. R., 118, decided in 1868, appears to be the first case in which the jurisdiction as to municipal corporations was distinctly raised, and that was upon the construction of an Illinois statute, which, the Supreme Court of that

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16 Howard U. S. R., 340.

But what if the Federal Courts have taken jurisdiction of municipal corporations—if wrong, must the wrong be persevered in? Can time, or precedent sanctify wrong? I am sure this court will hold no such doctrine, and in a question involving the construction

of the Constitution, will hold itself "trammeled by no precedent or any number of precedents. The Constitution is above all precedent, and its integrity every one is bound to vindicate against any number of precedents, if believed to trench upon its supremacy."

Says Justice Daniel, (16 Howard, 343) :

"The principle of *stare decisis* adopted by the courts in order to give stability to private rights and to prevent the mischiefs incident to mutations for light and insufficient causes, is doubtless a wholesome rule of decision when derived from legitimate and competent authority and when limited to the necessity which shall have demanded its application; but, like every other rule, must be fruitful of ill, when it shall be wrested to the suppression of reason or duty, or to the arbitrary maintenance of injustice, of palpable error or absurdity. Such an application of this rule, must be necessarily to rivet upon justice, upon social improvement and happiness, the fetters of ignorance, of wrong and usurpation.

"It is a rule which, whenever applied, should be derived from a sound discretion, a discretion having its origin in the regular and legitimate powers of those who assert it. It can never be appealed to in derogation or for the destruction of the Supreme authority—of that authority which created and which holds in subordination the agents whose functions it has defined, and bounded by clear and plainly marked limits. Whenever the Constitution commands, discretion terminates. Considerations of policy or convenience, if ever appealed to, I had almost said if ever imagined, in derogation of its mandate, become an offense. Beyond the Constitntion, or the powers it invests, every act must be a violation of duty, a usurpation.

"The rule which says to us, the abuse has already been put in practice; it has by practice merely become sanctified, and may therefore be repeated at pleasure, does indeed cut off all hope of redress, of escape, of redemption."

These burning words of Judge Daniel, applying with multiplied force to the present case, appeal to the wisdom and patriotism of this court to turn from the errors of their predecessors, in a course of decisions

which, if pursued, must draw into "the vortex of Federal encroachment" the whole range of domestic affairs, and every transaction of life, and overwhelm the courts with their very immensity. This case will involve, if the jurisdiction is sustained, no less than 3,000 defendants, who must each be brought in separately by process, and each be heard on their pleadings, and each may have his appeal to this court.

ERROR 2—MANDAMUS TO MUNICIPAL CORPORATION.

If I am correct in the position that the Circuit Court has no jurisdiction of municipal corporations, the whole case falls with it, and an examination of the other errors assigned, is unnecessary. But if this court holds otherwise, then we insist the Circuit Court cannot compel municipal corporations, by writ of mandamus, to levy and collect taxes for the payment of its debts.

"By the 11th article of the Constitution of the United States, which declares that the judicial powers of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the united States by citizens of another State, or by citizens or subjects of any foreign State, it was especially designed to protect the States and State governments against any interference or control by the Federal judicial power in the exercise of their reserved rights, including the taxation of their citizens for any purpose other than Federal purpose. The jurisdiction asserted by the Circuit Court, in suits against municipal corporations, to compel such corporations by writ of mandamus to exercise the sovereign power of levying taxes, thereby subjecting the officers of such corporations, who should be responsible alone to State authority, to the control of the Federal judicial power, invades the exclusive jurisdiction of the State, in a matter which is the highest attribute of sovereignty, and is opposed to the Constitution, and is an improper and unseemly interference in the exercise of the taxing power, vested by the State in such integral parts of the State government." Alabama Resolutions.

Recurring again to the ruling of the court in 7 Cranch, 33, and 8 Howard, 449, that the Circuit Courts possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general government will authorize it to confer, we fail to find in the Constitution, or acts of Congress, any authority conferred upon the Circuit Courts to issue the writ of mandamus to municipal corporations.

The jurisdiction must affirmatively appear. "The presumption is, that a cause is without its jurisdiction till the contrary appear." 4 Dallas, 8.

If it exists at all, the power must be deduced from the 13th and 14th sections of the Judiciary act of 1789, carried, substantially, into the Revised Statutes in §§ 688, 691, 692, 709, 716 and 751, and are—

"SEC. 13. That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a State is a party, except between a State and its citizens; and except also between a State and citizens of other States, or aliens, in which latter case it shall have original but not exclusive jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against Ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original but not exclusive jurisdiction of all suits brought by Ambassadors or other public ministers, or in which a Consul or Vice Consul shall be a party. And the trial of issues in fact, in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the Circuit Courts, and courts of the several States, in the cases hereinafter, specially provided for; and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of *mandamus* in cases warranted by the principles and usages of law, to any court appointed, or persons holding office under the authority of the United States.

"SEC 14. That all the before mentioned courts of the United States shall have power to issue writs of *scire facias, habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions and agreeable to the principles and usages of law. * * * *" 1 U. S. Stat., 81.

These sections constitute the only authority upon the subject. If *they* do not confer the power, it does not exist. Section 13 authorizes the *Supreme* Court to issue *mandamus*, in cases warranted by the principles and usages of law, to *courts appointed*, or *persons holding office under the authority of the United States.* To no other courts or persons can the Supreme Court issue the writ.

Section 14 authorizes the Supreme and Circuit Courts to issue writs of *scire facias, habeas corpus* and all other writs, not specially provided for by statute, which may be necessary to the exercise of their respective jurisdictions. The writ of mandamus is specially provided for—by statute—in the section immediately preceding,—the power to be exercised by the Supreme Court only,—and is therefore not one of the writs authorized by section 14. If it were intended to confer the power on the Circuit as well as the Supreme Court, then the words of section 13, giving the Supreme Court power to issue the writ of *mandamus*, are utterly useless, for the whole grant of power, to both courts, in the absence of these words from the 13th section, would have been covered by the language of section 14. The very authority given by section 13 to the Supreme Court, excludes it from the Circuit Court in section 14. The writ of mandamus being specially provided for by section 13, is necessarily excluded from section 14, which authorizes only *scire facias, habeas*

corpus and other writs *not specially* provided for. Construe the two sections together—read them as one—and they say plainly, the *Supreme* Court shall have power to issue writs of *mandamus*, and both the *Supreme* and *Circuit* Courts shall have power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary, etc.

If the writ of mandamus is included under the words, "all other writs not specially provided for by statute," then it were the idlest verbiage to confer the power on the Supreme Court to issue the writ in the first clause of the sentence, or in the 13th section, because if included under the "all other writs, etc.," in section 14, that would confer it on the Supreme, as well as the Circuit Court, and the grant in section 13 to the Supreme Court be wholly unnecessary and useless. It is too manifest for argument, that it was the intent to confer the *mandamus* power upon the Supreme Court exclusively, and all other necessary writs both upon the Supreme and Circuit Courts.

Neither these sections, nor any other act of Congress confer in express terms, the power on the Circuit Court to issue writs of mandamus to State officers or municipalities, and it is preposterous to infer that Congress intended to confer on an inferior court, a power which is not conferred on the Supreme Court itself. The power to issue the writ to municipal corporations, is plainly denied to the Supreme Court, by words of limitation in section 13; yet, to deduce the power from section 14, for the Circuit, it must be given to the Supreme Court also, because the words "other writs" apply to all the courts, and the interpretation that

would confer the power on the Circuit Court must necessarily confer it on the Supreme Court, which section 13 denies.

Section 13 provides that the Supreme Court shall have appellate jurisdiction from the Circuit Courts and courts of the several States in cases hereafter specially provided for, and shall have power to issue writs of mandamus, to any courts appointed, or persons holding office under the authority of the United States, etc.

Commenting on this provision of the section and vigorously combating the claim to power of the Circuit Courts to issue the writ to State officers, Justice Miller, in an able and earnest dissenting opinion (6 Wallace, 204), concurred in by Chase and Greer, J. J., very pertinently inquires:

"If Congress in the very sentence in which it gives appellate jurisdiction over State Courts, expressly denies to the Supreme Court the right to issue the writ of mandamus to State Courts and State officers, did it intend in the next section to authorize the inferior courts, which have no appellate jurisdiction whatever over any State tribunal, to issue mandamus to State Courts or State officers? Or did it intend that, while the Supreme Court itself was forbidden, both in its appellate and original jurisdiction, to issue a mandamus to State officers, that court might effect the same purpose by ordering the Circuit Courts to do it?"

Aspinwall v. *Knox* County, decided in 1860, 24 Howard, 376, is the first instance in which a Federal Court ever issued a writ of mandamus to a State officer, in the history of this government. In that case, the court say (24 Howard, 384):

"By the common law, the writ of mandamus is granted by the King's Bench in virtue of its prerogative and supervisory power over inferior courts. The courts of the United States cannot issue this writ by virtue of any supervisory power at

common law over inferior State tribunals. They can derive it only from the Constitution and laws of the United States."

Then, under the plea of necessity, the prolific parent of every usurpation, it is attempted to derive the power from section 14, above quoted, but I am sure such a plea can receive no countenance from this court, when asked to overstep the limits of the Constitution, to furnish a remedy not otherwise provided.

But we have seen that section 14, of the act of 1789, does not, by any reasonable construction, confer the power.

"It is clear that mandamus is not a merely ancillary writ, but is in all cases a separate action, with pleadings as in other actions, and judgment thereon. How then can it be said this is one of the ordinary powers of the court, incident to, and consequent upon the judgment of the court in an action of debt or assumpsit?"

Miller, J., 6 Wallace, 207.

"It is well settled, that a mandamus in modern practice, is nothing more than an action at law between the parties, and is not now regarded as a prerogative writ."

24 Howard U. S. Reports, 97.

Commonwealth Ky. v. Denison, Governor.

"It (mandamus) is an action or suit brought in a court of justice, asserting a right, and prosecuted according to the forms of judicial proceeding." 12 Peters U. S. Reports, 615.

"It is now regarded as an action by the party on whose relation it is granted." 3 Howard U. S. Reports, 100.

In this case the court held that the former action of mandamus is a bar to an action of assumpsit for the same cause.

Since the statute 9 Ann C 20, "a mandamus is in the nature of an action; special replications and pleadings therein being admitted, and costs given to either side that prevails, and error lies upon judgment given therein."

6 Bacon's Abridgments, 453.

Under these definitions of mandamus, it must be a violent construction of section 14, to deduce the power from it, even if section 13 did not clearly exclude it. It is certainly not a merely ancillary process in aid of the jurisdiction.

"The object of the proceeding, is to create a fund out of which the claim may be paid. Is there any writ or proceeding in the same case by which a fund may be created for the payment of a judgment at law, agreeably to the principles and usages of law?"

"It is the ordinary case of a party holding a debt of record, which cannot be realized by process of execution—it does not follow that a writ of mandamus in such a case, is necessary for the exercise of jurisdiction."

"No person shall be deprived of life, liberty or property without due process of law." Art. 5, Amendment Constitution of the United States.

Mr. Webster says—

"By the law of the land, is most clearly intended the general law—a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial."
4 Wheaton, 581.

The writ of mandamus is an infringement of this article, when used to coerce the levy of taxes. It takes the property of the citizen, without giving him an opportunity to be heard. It condemns without hearing, and proceeds to judgment without a trial.

It is an invasion of the legislative, by the judicial department of the government. The levy of taxes is the exercise of a legislative power. "Municipal corporations are but parts of the machinery employed in carrying on the affairs of the State." In this respect they are mere agents of the Legislature in the imposi- of taxes for certain purpose. There can be no more flagrant invasion of the legislative department of the government, than for the courts thus to seize its agen-

cies and compel the levy and collection of taxes, and thus accomplish indirectly, what it could not do directly, by mandate to the Legislature.

There is no law in Tennessee which authorizes the courts of that State to issue writs of mandamus to municipal corporations, save to order an election to subscribe stock to railroads, and to levy a tax to pay the same, under a special act,—section 1163 of the Tennessee Code. Section 537 of the code provides that "the performance of any duty made incumbent by law on the *County Court*, may be enforced by mandamus from the Circuit." This is taken from the act of 1855–6, chapter 90, and excludes municipal corporations by limitation to the County Court. Prior to that act, it was held that "the judiciary has no power to award a manadmus to the Justices of the County Court to compel the assessment of taxes to pay county debts." 7 Humphrey, 145.

There was no law in Tennessee authorizing the writ of mandamus to municipal corporations, for any purpose, except to subscribe stock to railroads as above, at the date of the issue of the bonds claimed by plaintiffs, and that remedy cannot be insisted upon as part of the law of the contract.

See note to section 3567, of Thompson & Steger's Tennessee Statutes, for a collection of all the cases in which the writ of mandamus lies under, the adjudication of that State. It will be found in no case, to lie to municipal corporations to compel the levy of taxes.

ERROR 3.

That the court may seize and impound the assets,

revenues and property of a living municipal corporation; collect, administer and disburse the same in payment of its debts, ought to require no argument or authority to refute. The municipal corporation is an instrument created by the Legislature for purposes of local government, and, to say that the court can seize and impound all its property and revenues, is to say that it may destroy this instrument of government, or that the court may, itself, administer a corporate government. We have found no case sustaining such assumption of power. The original bills of Garrett & Sons, and Loudon, which claim this power, and pray for its exercise, were filed against the city of Memphis alone, before the repeal of the charter. R., 4 and 29.

They cannot be maintained, and the demurrer, No. 5, for that cause (R., 100), ought to have been sustained.

ERROR 4—MAY SEIZE AND IMPOUND REVENUES AND PROPERTY OF EXTINCT CORPORATIONS.

We maintain it was competent for the Legislature to abolish the charter of Memphis, and, in the event of repeal, the public property and revenues are subject to the control of the Legislature of the State, and are not subject to levy and sale under execution, and cannot be seized and impounded by the court for the benefit of creditors. See 93 U. S. R., 108, 114, 116.

The same arguments and authorities support equally the 5th, 6th, 7th and 13th assignments of error.

"Inferior and subordinate communities *imperia in imperio*, such as cities and towns, are allowed to assume to themselves some of the duties of the State in a partial or detailed form,

but having neither property nor power for the purposes of personal aggrandizement, they can be considered in no other light than auxiliaries of the government, and as the secondary deputies and trustees and servants of the people.

"The main distinction between public and private corporations is, that over the former, the Legislature, as guardian of the public interests, has the exclusive and unrestrained control; and acting as such, as it may create, so it may modify and destroy, as public exigency requires or recommends, or the public interests will be best subserved. It possesses the right to alter, abolish, or destroy all such institutions, as mere municipal regulations must, from the nature of things, be subject to the absolute control of the government.

"Such institutions are auxiliaries of the government in the important business of municipal rule. A municipal corporation like the city of Baltimore, is a representative not only of the State, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere, the powers of the State. The State may withdraw these local powers of government at pleasure, and may, through its Legislature or other appointed channels, govern the local territory as it governs the State at large. It may enlarge or contract its powers or destroy its existence. As a portion of the State, in the exercise of a limited portion of the powers of the State, its revenues, like those of the State, are not subject to taxation." 17 Wallace U. S. Reports, 328.

"The creation of municipal corporations, and the conferring upon them of certain powers, and subjecting them to corresponding duties, does not deprive the Legislature of the State of that complete control over their citizens which was before possessed. It still has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one, overrule their action whenever it is deemed unwise, impolitic or unjust, and even abolish them altogether, in the legislative discretion. The rights and franchises of such a corporation, being granted for the purposes of the government, can never become such vested rights, as against the State, that they cannot be taken away; nor does the charter constitute a contract in the sense of the constitutional provision which prohibits the obligation of contracts being violated."

Cooley Constitutional Limitations, 192.

1 Dillon M. Corporations, 139.
5 Humphrey Tenn. Reports, 39.
11 Humphrey Tenn. Reports, 583.
5 Heiskell Tenn. Reports, 527.

"Public corporations are but parts of the machinery employed in carrying on the affairs of the State; and they are subject to be changed, modified or destroyed, as the exigencies may demand. The State may exercise a general superintendence and control over them and their rights and effects, so that their property is not diverted from the uses and objects for which it was given or purchased." 13 Illinois, 30.

"Municipal corporations, which exist only for public purposes, may be altered, modified or abolished at pleasure, as they are but parts of the machinery employed to carry on the affairs of the State, over which and their rights and effects, the State may exercise a general superintendence and control. In their franchises they have no vested rights."

Burroughs on Taxation, p. 22.

"Corporations of the kind are properly denominated public corporations, for the reason that they are but parts of the machinery employed in carrying on the affairs of the State; and it is well settled law, that the charters under which such corporations are created, may be changed, modified, or repealed, as the exigencies of the public service or the public welfare may demand." 92 U. S. Reports, 310.

"The property owned by the city corporation is held by it as a public corporation, and is subject to the law-making power of the State, vested in the Legislature."

"Property held by the corporation for public use, is not subject to levy and sale on execution, but property not held in trust for such use may be thus subject."

Darlington v. Mayor of New York, 1865. 31 New York Reports, 164.

Section 76 of the charter of 1875, appendix p. 101, and the general law, exempted public property of every description from execution or attachment, and all property and effects, bills receivable, taxes due, or money on deposit, or in the treasury, from seizure or sale under attachment, execution, garnishment or other legal process.

If the State may create and destroy municipal corporations at will, as these authorities show, and may control and dispose of the property and revenues of the corporation; and if, as in this case, it has devoted the public property to the same purposes of government, and the unpaid taxes to the payment of the creditors, and appointed an officer to collect them for that purpose, the Circuit Court oversteps the bounds of its legitimate authority, when it attempts to seize and impound said property and taxes, and take them out of the hands of the officer appointed by the State, to collect and disburse them. If the court may control the special tax levied under the writ of mandamus for the use of the creditor, which is not admitted, it certainly cannot control the taxes levied for purposes of government. The exercise of the power here claimed for the Circuit Court, is a violent invasion of the legislative power of the State, and if sustained, must deprive the State of all control of her own municipal corporations.

ERROR 8—SUING DELINQUENT TAX-PAYERS.

This court has said (19 Wallace, 655), "the power to levy and *collect* taxes is a legislative function in this country, and does not belong to a court of equity, and *can only be enforced by a court of law, through the officers authorized by the Legislature, under whose authority they are assessed.*" S. P., 93 U. S. Reports, 258.

And in *Rees* v. *Watertown*, 19 Wallace 107, the court says, "the Federal Courts sitting in equity, do not possess power to appoint the Marshal to levy or collect the tax, nor to subject taxable property situate within

the corporate limits of the city, in any way, to an assessment in order to pay the judgment."

Under the doctrine of these cases and that of *Mumma* v. *Potomac Co.*, 8 Peters, 287, which was the case of a private corporation, and therefore so much the stronger, the Circuit Court cannot collect the delinquent taxes, through its own officers, by proceedings against the delinquent tax-payer in this case. If it can collect at all, it must do so through the officers, and "in the mode permitted by the local law."

There is no privity between the delinquent tax-payer and the plaintiffs in this cause, that would enable the latter to maintain an action against the former.

In *City of Augusta* v. *North*, which was a suit to collect a tax duly assessed, but by subsequent law repealed, it was held—

"That a tax, duly assessed, is not a debt. It is an impost, levied by the authority of the State, upon its citizens. There is no promise on their part to pay. The proceedings throughout are *in invitum*. A debt is a sum due by express or implied agreement. It was held, in *Pierce* v. *Boston*, 3 Met., 520, that taxes, being neither judgments nor contracts, were not the subject of set-off. In *Shaw* v. *Pickett*, 26 Vermont, 482, it was held, the assessment of taxes did not create a debt that could be enforced by suit, or upon which a promise to pay interest could be implied. * * * * The Legislature have the same right to remove a burden, as to impose it. It is a matter for their determination." 57 Maine, 394.

and repeal of the tax is not within the inhibition of the federal Constitution

It is true, that in this case the Legislature has not removed the burden of the back tax, but no action can be maintained against the tax-payer, except so far, and in the mode, authorized by the Legislature. The back tax is not a debt for which the plaintiff may sue and recover.

"Taxes are not debts, in the ordinary sense of that term, and their collection will, in general, depend on the remedies which are given by statute for their enforcement." Cooley on Taxation, 13.

"The repeal of a tax law, before the tax is collected, puts an end to the tax itself, where no rights are reserved in the repealing act, and nothing in the act indicates a contrary intent." Cooley on Taxation, 14.

Garnishment, like mandamus, is, in all cases, a separate action, with pleadings, as in other actions, and judgment thereon, and appeal therefrom. No act of Congress authorizes garnishment of debtors of even a private corporation, unless the United States be the plaintiff (R. S. § 935), and this, by necessary implication, excludes private suitors. The power cannot be deduced from the 13th and 14th sections of the Judiciary act. It is not a process necessary to the exercise of the jurisdiction of the court.

ERROR 9.

The enforcement of tax liens, which the municipal corporation possessed. This court said—

"Liens for taxes are very generally created throughout the country, but it is never supposed that the public creditors, to whom the money raised by tax is to be paid, have the benefit of such lien. It is created for the benefit of the public authorities, to enable them, with greater certainty and facility, to collect the taxes without the embarrassment of other pretended claims against the property taxed." 93 U. S. R., 265.

ERROR 10.

Enjoining the defendant, Meriwether, as Receiver and Tax Collector—an officer of the State—from suing for and collecting the back taxes, is prohibited by express statute.

"Injunction shall not be granted by any court of the United States, to stay proceedings in any court of a State, except in cases where such injunction may be authorized by law, relating to proceedings in bankruptcy." R. S., § 720.

The said Meriwether is an officer of the State of Tennessee, and was proceeding, under the authority of the State, to sue for, and collect the taxes imposed by the corporate authorities of Memphis, to be paid into the Treasury of the State for the use of creditors, when arrested in the discharge of that duty by the injunction of the Circuit Court in this cause, and forbidden to proceed therein.

The defendant, Meriwether, as such Receiver and Tax Collector, filed a bill on 31 March, 1879, in the Chancery Court, in the name of the State, against Wilson, one of the tax-payers (R. 79), and, on 26 April, 1879, filed another bill in Chancery Court, in the name of the State, against Butler, and nine hundred other delinquent tax-payers, in pursuance of the act, chapter 92, of 1879 (appendix 72), for the collection of said taxes, when he was enjoined from proceeding with said suits, or any suits for the collection of said taxes, by the decree in this cause (R. 110), in violation of the positive command of the statute above quoted. In the absence of any express authority, the Circuit Court could not lawfully issue the injunction, but here it is done in the face of a positive prohibition. Thus an officer of the State, responsible alone to the State, charged with the duty of collecting the taxes for the benefit of the creditors of the extinct municipality, is displaced, and forbidden to execute the law, and the Circuit Court, usurping the office of tax collector, undertakes to collect taxes through its own officers, and to administer and disburse them.

ERRORS 11 AND 12.

The same is true of the 11th and 12th errors assigned:—in the one case, the Circuit Court assumes control of Fleece, a tax-collector, and officer of the State, and commands him to pay over to its receiver, revenues by him collected; and in the other case, commands Uhl, the Clerk of the State Court, to pay over revenues by him collected—not simply the specific taxes levied for creditors, but taxes levied for general purposes of government. And this command, though not in form, is, in substance, a mandamus to a State officer—which the court has no power to issue. All three of these defendants are officers of the State—revenue collectors, responsible alone to the State, and this action of the Circuit Court is an invasion of the supreme right of the State, in the absolute control of its own officers, and the entire matter of the imposition and collection of taxes. This assumption of power, takes from the State all control over its own revenues, its agencies of government, and its officers, and they become obsequious satelites of the Federal Court, to be moved at the bidding of the Circuit Judge; and thus we shall have, if this assumption of power is sustained, the anomalous and melancholy spectacle of the Federal judiciary superseding the functions of the State Legislature, and supervising and administering all domestic affairs of the State. What is to be the result of all this? The Circuit Court asserts the power to seize and impound the property and revenues of living and dead corporations, to supervise and control the payment of their debts, to bring the inhabitants before its bar, assess taxes and render judgment therefor, against each, personally, and to take control of the revenue officers

of the State. There is little left after that, but to depose the State governments, and take upon itself, all the functions of government—legislative, judicial and executive. Think of the Federal Court bringing before its bar each inhabitant tax-payer, of a city of a million, like New York, and rendering judgment against him for any sum, from fifty cents upward!

The Circuit Court cannot take jurisdiction of a controversy of less than $500. What is to be done when Receiver Latham brings in, by bill or petition, a tax-payer, charged with an indebtedness of fifty dollars for back taxes, and asks the court to render judgment against him for that sum? Will the Circuit Court dismiss Latham's petition for want of jurisdiction, and turn the small tax-payer loose? Will it reject all cases where the amount of tax due is less than $500, and only render judgment against the large tax-payers? Or will it override the law, and take jurisdiction of the big and little fellows alike? This illustrates the absurdity of bringing each tax-payer of a city of a million, into the Federal Court, and rendering judgment against him for the amount of his tax. It is a separate suit against each inhabitant; each has his separate defense; judgment must be rendered separately, against each, for the amount of his tax found to be due, or *pro rata* of the debt, in favor of Latham, whether the sum be one dollar or one thousand.

ERROR 13.

The subjection of the revenues, levied for the purposes of government, and the public property of the extinct corporation, to the payment of its debts, is too manifest for argument. The charter of 1875, sec. 76,

appendix 61, expressly declares the public property and revenues exempt from seizure and sale, under any legal process.

"The property owned or used by the corporation for public purposes, such as public buildings, hospitals, cemeteries, fire engines and apparatus, waterworks and the like, are not subject to execution, and judgments are not liens on real property, except when it may be taken in execution."

Dillon Municipal Corp., sec. 446.

"It is the settled doctrine of the law, that the taxes and public revenues of municipal corporations cannot be seized under execution against them. Such taxes and revenues cannot be seized, either in the treasury or when in transit to it."

Ib., sec. 64.

17 Wallace U. S. R., 328.

"A municipal corporation cannot extinguish the public uses in property held in trust for public use, nor is such property subject to the payment of the debts of the municipality."

Dillon M. Corp., sec. 512.

"Property held by the corporation for public use, is not subject to levy and sale on execution." 31 New York, 164.

See, also, the authorities, especially 31 New York, cited *ante* in support of error 4.

The repeal of the charter cannot change the nature of the public property. Being under the absolute control of the Legislature, it must still be devoted to public uses, as has been done in this case. The act of repeal vests it in the State, to remain public property, as it has always been, for the same uses and purposes to which it had previously been applied. It is held in trust for public use, and cannot be taken by creditors on execution or attachment.

ERROR 14—MAY ENFORCE COLLECTION IN MONEY, AND IN ONE PAYMENT.

The Legislature having the power of absolute repeal,

and the power to dispose of the property and revenues of the dissolved corporation, and having absolute and exclusive control over taxation, may grant relief to the tax-payer by extending the time of payment. It has been done repeatedly. See the various stay-laws and relief laws, suspending collection of taxes for longer or shorter periods, passed from time to time by the various State Legislatures. The power to do this is not questioned.

The charter, section 66, chapter 92, of 1875, and chapter 18, of 1877, see appendix p. 60762, made the taxes payable in certain indebtedness. The act creating the office of Receiver, chapter 92, of 1879, appendix p. 72, authorizes the payment of the tax, in five annual installments, and in said indebtedness at certain rates, where no rights of creditors are thereby interfered with. In other words, the creditor himself is permitted, not compelled, to pay said taxes in said indebtedness, or dispose of the indebtedness to the tax-payer for that purpose; but the Circuit Court says no—it will compel the payment of the whole in money, and at one time.

ERRORS 15, 16 AND 17—PROPERTY OF INHABITANTS LIABLE; MAY ASSESS TAXES, AND RENDER PERSONAL JUDGMENTS.

It is error to hold the property of the inhabitants primarily liable for the debt of a dissolved corporation, or that it constitutes a fund to which creditors may resort for its payment. If the property were a fund for its payment, the creditor would be directly interested in the property, and could pursue it wherever found; but here he has no interest or lien on the prop-

erty, and cannot subject it, by direct proceeding in law or equity, to his debt. The owner may pull down buildings or machinery, and remove his property beyond the State, and the creditor cannot prevent it or pursue it, which he could do, if primarily liable.

"Outside of the New England States, the creditors of a municipal corporation cannot resort, for the purpose of making their debts, to the private property of the inhabitants."
Dillon Municipal Corp., sec. 446.

"The inhabitants are not joint and several debtors with the corporation, nor does their property stand in that relation to the corporation or to the creditor. This is not the theory of law even in regard to taxation." 19 Wallace U. S. R., 119.

"Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes, or to accomplish some governmental end. The power to impose taxes is vested in the representatives of the people, in the legislative branch of government." Borroughs on Taxation, p. 2.

"The legislative branch of the government has the exclusive power of taxation, but may delegate it to municipal corporations." United States v. New Orleans, 97 U. S. R., 381.

"The marshal is the executive officer of the court, and can only execute its processes, and the court, without some special authority, as that contained in the Iowa Code, cannot enforce its judgments for the recovery of a debt in any other way than by seizing and selling the property of the judgment debtor. * * * Where the debtor is a corporation, it cannot seize the property of its members. This it would do, if it should issue a writ to the marshal, commanding him to levy a tax upon the inhabitants of a municipal corporation, or upon their private property.

"The court has no more authority, in point of law, to seize the property of citizens for the debt of the corporation in which they reside, than it has to seize the property of another corporation." 93 U. S. R., 265.

"It is too clear for argument, that taxes not assessed are no liens, and that the obligation to assess taxes is not a lien on the property on which they ought to be assessed. This was one of

the points urged and overruled in Rees against Watertown."
19 Wallace, U. S. R., 659.

"The power of taxation belongs, in this country, to the legislative sovereignty, State or National. * * * * It certainly is not vested, as in the exercise of an original jurisdiction, in any Federal court. It is unreasonable to suppose that the Legislature would ever select a Federal court for that purpose. It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by the judiciary of the Federal government, of the legislative functions of the State government.
19 Wallace U. S. R., 661.
Cooley on Taxation, 33–34.

"The court has not the power to direct a tax to be levied for the payment of these judgments. * * * It is a power that has not been extended to the judiciary. Especially is it beyond the power of the Federal judiciary to assume the place of a State in the exercise of this authority, at once so delicate and so important." 19 Wallace U. S. R., 116.

"The Legislature must determine all questions involved in ordering a tax, * * * and must decide upon the agencies by means of which the collections shall be made."
Cooley on Taxation, 34, and notes.

The repeal of the charter takes away all power of imposing taxes. The court cannot assess taxes. Even if the court could issue a mandamus to a living corporation, to compel the levy of taxes, it cannot do so to a dead corporation. There are no officers and nobody to be coerced in that case—no one to whom the writ could be addressed—and the creditor must look alone to such remedies and such relief, as the Legislature may provide. The court cannot provide a remedy.

"A court of equity cannot, by avowing that there is a right, but no remedy known to the law, create a remedy in violation of law, or even without the authority of law."
Rees v. Watertown, 19 Wallace, 122.
Heine v. Levee Commissioners, Ib., 655.
Barkley v. Levee Commissioners, 93 U. S. R., 258.

ERROR 18—WHERE CHARTER REPEALED, CREDITOR NOT LIMITED TO RELIEF PROVIDED BY LEGISLATURE. COURT MAY DISREGARD, AND AFFORD OTHER RELIEF.

This is to hold that the court may exercise legislative powers—that it may levy and collect taxes. The argument and authorities cited as to errors 15, 16, 17, refute this proposition.

ERROR 19—ACTIONS AGAINST A DEAD CORPORATION.

The court permitted two of the original bills to be filed against the city after the charter was repealed, and all its officers resigned. By its decree (R. 110), it permits creditors now to sue the city, as if it were alive and in full operation.

A suit commenced and prosecuted against a dead corporation is an anomaly in judicial history.

"There is no pretence that a *scire facias* can be maintained, and a judgment had thereon against a dead corporation, any more than against a dead man." 8 Peters U. S. R., 287.

If a *scire facias* cannot be maintained, much less can an original suit be commenced and prosecuted against a dead corporation.

ERRORS 20, 21 AND 22—REPEAL OF THE CHARTER, AND VESTITURE OF ITS UNPAID TAXES IN STATE, FOR BENEFIT OF CREDITORS, UNCONSTITUTIONAL AND VOID AS TO CREDITORS.

This proposition proceeds on the assumption that the creditors had a vested right in all the public property and revenues of the corporation, general and special, and a vested right in the exercise of the taxing power.

Section 721, Revised Statutes, provides that the laws

of the several States shall be regarded as rules of decision, in trials at common law in courts of the United States, except where the Constitution and the United States statutes otherwise require.

"The decision of the highest court of a State, that an act of the State is not in conflict with a provision of its Constitution, is conclusive on this court."

9 Wallace U. S. R., 35.
7 Wallace U. S. R., 523.
16 Wallace U. S. R., 678.
92 U. S. R., 289, 576.
98 U S R 359

The Supreme Court of Tennessee has already pronounced on the two acts—chapters 10 and 11, of 1879—and held them constitutional in every particular; and that decision must control this court in its construction of those acts. See the able opinion of Judge Cooper, in *Luehrmann* v. *Taxing District*, 2 Lea Tennessee Reports, 425, rendered 31 May, 1879.

The authorities already cited in demonstration of preceding errors, show conclusively the absolute power of the Legislature to destroy municipal corporations.

"If the act of incorporation be a grant of political power; if it create a civil institution to be employed in the administration of the government, or if the funds of the college be public property, or if the State as a government be alone interested in its transactions, the subject is one in which the Legislature of the State may act according to its own judgment, unrestrained by any limitation of its power imposed by the Constitution of the United States."

Dartmouth College case.
4 Wheaton U. S. R., 649.

"Unless the second point, that the surrender of the charter of the company violates the obligation of the contracts of the company, can be maintained, there is an end of the cause; for there is no pretence to say that a *scire facias* can be maintained, and a judgment had thereon, against a dead corporation, any more than against a dead man. We are of the opinion that

the dissolution of the corporation, under the acts of Virginia and Maryland, cannot, in any just sense, be considered within the clause of the Constitution of the United States on this subject, an impairing of the obligation of contracts of the company, by those States, any more than the death of a private person can be said to impair the obligation of his contracts."

"A corporation, by the very terms and nature of its political existence, is subject to a dissolution, by a surrender of its corporate franchises, and by a forfeiture of them for willful misuser and nonuser. *Every creditor must be presumed to understand the nature and incidents of such a body politic, and to contract with reference to them.* And it would be a doctrine new in the law, that the existence of a private contract of a corporation, should force upon it a perpetuity of existence, contrary to public policy and the nature and objects of its charter."

Mumma v. Potomac County.
8 Peters, 287.

If this be so in reference to private corporations, as was the Potomac Co., how much stronger is it when applied to municipal corporations—mere grants of political power.

The power to repeal the municipal charter at the will of the Legislature, is a part of the law of the contract, and enters into it, and the exercise of the power is, therefore, no impairment of the obligation of the contract. If the obligation survives the repeal, it can only be enforced against the strictly private property of the corporation—that held for purposes of private gain.

The charter being revocable at the will of the Legislature, creditors assume the risk of repeal, in dealing with the corporation; and debts due to and from the municipality lapse and become extinguished, as at common law, unless saved in the act of repeal.

2 Kent Commentaries, 307.*
13 Smedes & Marshall, Miss. R., 159.
31 New York, 164.
5 Humphrey, Tenn. R., 39.

The Legislature undertook to prevent this lapsing, by vesting in the State, the taxes due the extinct corporation, for the purpose of applying them to its debts; and faithfully carrying out this purpose, has appointed a Receiver to collect and so apply them. Every right of the creditor is jealously guarded in said act, chapter 92, of 1879. A tribunal is provided where he may establish his claims, and prior equities, by a mere petition in a proceeding instituted in the name of the State for his benefit; and the act declares that no indulgence is intended to be extended to the delinquent, as to time or character of funds, in which the taxes may be paid, where the rights of creditors require an immediate payment in money. See appendix, secs. 5 and 6, chapter 92, act 1879.

If this law is void, then the taxes lapse, and the creditor has no remedy. This court has repeatedly said it cannot assess taxes, or appoint tax collectors, or collect taxes. The charter being repealed, the taxes uncollected, fall with it, unless this law saves them for the creditor; and he must take them in the mode which the law provides, or not at all. In *Heine* v. *Levee Commissioners*, 19 Wallace, 661, the court says:

> "So far as the present case is concerned, the State has delegated the power of taxation to the Levee Commissioners. If that body has ceased to exist, the remedy is in the Legislature, either to assess the tax by special statute or vest the power in some other tribunal."

The claim asserted by the creditor, of a vested right in the exercise of the taxing power, is utterly untenable. The taxing power is pre-eminently sovereign and legislative. It is necessary to the existence of government, and cannot be given or bargained away in the case of municipal corporations, so as to deprive future

Legislatures of complete control of the subject. The creditor of the corporation never did possess any interest in the public revenues of the city, levied for the purposes of government. These revenues, when collected and in the Treasury, belong to the State, upon a dissolution of the corporation, and cannot be taken for its debts. And even as to special taxes, levied for the use of the creditor, they remain a part of the private property of the citizen, till collected, and the creditor has no lien upon them which he can enforce, the lien being for the convenience of the government, and not for the benefit of the creditor. See 93 U. S. R., 265.

"The powers of sovereignty confided to the legislative body of a State, are undoubtedly a trust committed to them, to be executed to the best of their judgment for the public good; and no one Legislature can, by its own act, disarm their successors of any of the powers or rights of sovereignty, confided by the people, to the legislative body, unless they are authorized to do so by the Constitution under which they are elected. They cannot therefore, by contract, deprive a future Legislature of the power of imposing any tax it may deem necessary for the public service, or of exercising any other act of sovereignty confided to the legislative body, unless the power to make such a contract is conferred upon them by the Constitution of the State." 16 Howard U. S. R., 431.

97 U S R 697

"It is claimed that the power of taxation is one of the sovereign powers of the State, necessary to its continued existence, and that it was never contemplated, when the people, through their Constitutions, delegated to their representatives in the Legislature assembled, the power to make laws for the good of the people of the State, that this grant of legislative power carried with it, the right to barter away with private corporations, one of the essential prerogatives of the government, the very life blood of the State."

Borroughs on Taxation, p. 110.

"We do not believe that any legislative body, sitting under a State Constitution of the usual character, has a right to sell, to give, to bargain away forever, the taxing power of the State. This is a power which, in modern political societies, is abso-

lutely necessary to the continued existence of every such society." 8 Wallace U. S. R., 443, dissenting opinions of Justices Miller, Chase and Field.

This was in reference to the alienation of the taxing power in the case of a strictly private corporation. And certainly as to municipal corporations, mere political agencies, destructible at the will of the Legislature, it cannot be seriously contended, that the Legislature can make an irrevocable grant of the taxing power.

Cooley, J., reviewing the cases, 19 Michigan, 282, says:

"It is not very clear that the Supreme Court of the United States, has ever at any time, expressly declared the right of a State to grant away the sovereign power of taxation."

In *State Bank of Ohio* v. *Knoop*, 16 Howard, decided 1853, Catron, Daniel and Campbell, J. J., dissented from the proposition; and, in another case, at same term, *Ohio Life Insurance and Trust Co.* v. *Debolt*, 16 Howard, Taney and Grier, J. J., dissented, making five judges of that court—a majority—who refused their assent to the proposition. In a later case, 1869, *Washington University* v. *Rouse*, 8 Wallace, we find Judges Miller, Chase and Field denying the power. In that case, Judge Miller says:

"To hold, then, that any one of the annual Legislatures can, by contract, deprive the State forever of the power of taxation, is to hold that they can destroy the government they are appointed to serve, and that their action in that regard is strictly lawful." * * * *

"We think there may be questions touching the powers of Legislative bodies, which can never be finally closed by the decisions of a court, and that the one we have here considered, is of that character. We are strengthened in this view of the subject by the fact, that a series of dissents from this doctrine by some of our predecessors, shows that it has never received

the full assent of this court; and referring to those dissents for more elaborate defense of our views, we content ourselves with thus renewing the protest against a doctrine, which we think must finally be abandoned." 8 Wallace U. S. R., 444.

The courts of Ohio, Maryland, Michigan, New Jersey, New Hampshire, Vermont, Pennsylvania, Connecticut and North Carolina have denied the power.

Burroughs' Taxation, p. 112.

"Revenue is as essential to government, as food to individuals; to sell it, is to commit suicide."

30 Pennsylvania State R., 9.

All these cases relate to concessions to private corporations, of the taxing power, and impeach the Dartmouth College decision, in respect to alienation of the taxing power even as to private corporations; and the constitutional provision touching the impairment of contracts, seems to have no application to the revocation of the taxing power given to municipal corporations. The power to revoke, in that case, is a necessary sequence of the power to destroy. If the Legislature may repeal the charter, and destroy the machinery by which municipal taxes are imposed, the taxing power necessarily falls, as there is no method left of enforcing the levy, the court having no power to impose taxes.

In this case, the Legislature has emphasized its purpose to withdraw and reserve to itself, the taxing power, by forbidding its exercise, for any purpose, by any of the officers of the new government, and declaring that no mandamus shall lie to compel them to levy taxes, and that the new government shall not be liable for the debts of the old. The same act appropriates all unpaid taxes of the extinct corporation, to the payment of its debts, to be collected by a special officer, for that

purpose. See sections 2, 11, 12 and 14, chapter 11, 1879. Appendix, 707 //

"The provision prohibiting the States from passing 'any law impairing the obligation of contracts,' is found in the same paragraph with the prohibition against passing any bills of attainder, expost facto laws, and laws granting titles of nobility." Borroughs on Taxation, p. 108.

"It would seem to be clear from the history of the adoption of this provision of the Constitution, that it was only intended to apply to contracts between private individuals; to give the same protection to civil contracts against retrospective legislation, as is given in the same paragraph to retrospective legislation as to crimes; that the provision against expost facto laws, and laws impairing the obligation of contracts, each refer to individual citizens of the State and not to the States."

Ib., p. 109.

ERROR 23—IF VALID REPEAL OF CHARTER DOES NOT EXTINGUISH DEBTS, COURT MAY SEIZE AND COLLECT TAXES REMAINING UNPAID.

All the authorities adduced in proof of the other errors assigned, show that under no circumstances can the court appoint tax collectors or collect taxes. It is unnecessary to repeat them here. If it can issue writs of mandamus to State officers, which is denied, the court may compel him, whom the State has authorized to collect the tax, to proceed with that duty, in the mode which the State law directs him to proceed, provided the officer is neglecting his duty, and not otherwise.

ERROR 24—JURISDICTION UPON THE ENTIRE RECORD TO ENTERTAIN THE BILLS, AND GRANT THE RELIEF SOUGHT BY PLAINTIFFS.

We maintain this cannot be done.

These are bills against a municipal corporation—not a citizen—of which the Federal courts have no jurisdiction.

Two of the bills are filed against a municipal corporation in being, and ask the court to seize all its assets and property, take possession of its tax books, and appoint a receiver to collect its taxes—those levied for purposes of government, as well as special taxes—and apply them to the payment of their claims against the city. R. 4.

Two other bills, and the amended and supplemental bills, were filed against the city after the repeal of its charter—filed against a dead municipal corporation—and ask the court to seize all its public property of every description; its squares, promenades, parks, wharfs, streets; its public buildings, its school houses, market houses, engine houses, fire engines, etc., which had been appropriated by the Legislature to the same public uses; and to seize all the money, and tax books, and uncollected taxes of the extinct corporation—those levied for purposes of government, as well as special taxes—appoint a receiver to collect them, and displace the tax collectors appointed by the State, and apply all said public property, and all said taxes, general and special, to the payment of their claims against the city. R. 17–21.

They ask the court to summon to its bar, each individual delinquent tax-payer, and render personal judgments against each, in favor of plaintiffs, for the amount of back taxes found to be due from each, and to subrogate plaintiffs to the lien upon the tax-payers' property, which the city previously held, for the payment of such judgment. R. 21.

When these resources are exhausted, they ask the court to assess taxes upon the property of the inhabitants, and collect them, through its receiver, sufficient to pay the balance of the entire debt of the entinct municipality, and to render personal judgments against the individual inhabitant tax-payers, for the amount of the taxes so assessed, and enforce them by sales of their property, under the orders and processes of the court.

R. 20.

They ask the court to treat the extinct city as a dead man, and to take possession of all its books, papers, property and effects, and administer upon its estate, and settle its debts; to declare all the private property of the inhabitants, assets for the payment of the debts of the dead corporation, and to declare all the inhabitants debtors to the dead corporation, to the full amount of all its debts, and jointly and severally, liable therefor; and to declare all the debts of the dead corporation, a lien like a tax lien, superior to all other liens, upon all the property of the inhabitants.

R. 3, 4, 17–21.

The Federal Courts can not administer estates, either of dead men or dead municipal corporations. The court has in this case, by its decree, R. 110, attempted to administer the estate of the extinct corporation, and has permitted all creditors, without regard to residence, to come in and establish their claims, and receive their share of the assets. Thus the constitutional provisions, which require that suitors in the Federal Courts, shall be citizens of different States, and the law which limits the jurisdiction, to sums exceeding $500, are over-ridden, and a resident creditor, whether his claim be $500 or less, is allowed to come in, and

maintain a suit against the city. If the court attempts to administer the *assets* of the dead city, as these bills denominate the public property and taxes, and adjust and pay its debts, it must admit, as it has done by its decrees and orders, all creditors, big and little, resident and non-resident, to come in and prove their debts and participate. It has authorized Latham, who is himself, a resident of Memphis, to sue the citizens of Memphis in the Circuit Court, at Memphis. Such is the maze of difficulties and absurdities into which, this unwarranted assumption of power inevitably leads. Many of the bonds of the city, held by creditors, were issued without authority and in fraud. Many claims are fradulent; against others, are good defenses. In all domestic administrations, there is an administrator to contest improper claims, but in this case, there is no one to defend the dead city. The former officers have all resigned, and could not, if they would. The offices are abolished. The Circuit Court, looking alone to the interest of the creditor, has appointed no one to contest the claims of the creditor, but invites him to come in, and file his claim, and cast lots for the vestments of the poor dead city.

They ask the court to enjoin the defendant, Meriwether, an officer of the State, from prosecuting suits then pending in the Chancery Court of the State, in the name of the State, against the delinquent taxpayers, for the collection of said back-taxes, for the use of creditors of the city, and from collecting or attempting to collect said taxes, in any manner. R. 88. These suits in the Chancery Court (about 168 of them), were instituted several years before the filing of the bills in these causes, and were by authority of the act of 1879,

chapter 92, section 4, revived in the name of the State, and consolidated with the cause of *The State* v. *Butler et al.*, commenced on 26 April, 1879, against Butler and about 900 other delinquent tax-payers. The suit in the State Court against Wilson, was commenced 31 March, 1879, R 89. The decree entered in the Circuit Court, 28 May, 1879, R. 110, enjoined Meriwether, as such Receiver and Tax-Collector, from suing for said taxes, and covers all these suits in the State Courts.

"Where a State or Federal court has *rightful* jurisdiction of parties and the subject matter, it must be allowed to proceed to judgment and execution; their jurisdiction being exclusive and independent, process issuing from the one, cannot be enjoined by suit in the other." *Merchants of Memphis* v. *City of Memphis, et al.*, Legal Reporter, October, 1877, p. 195, and authorities there cited.

The agreed case, *State* v. *Wilson*, R. 89, gives the State court jurisdiction of the parties and the subject matter. 1. The complainant is the State. 2. The defendant is a citizen of the State. 3. He owes taxes which, under the State laws, it is his duty to pay to the State, if the laws are valid enactments; and these are proper questions for the determination of the State courts.

The defendant Wilson, in the agreed case, R. 89, was not a party at the time, to the suit in the Circuit Court, and is not now, the bill as to him being dismissed. This court had not possession of the subject matter involved in the agreed case, in the State court, by its receiver.

In order to acquire such jurisdiction, supposing the Federal Court could take jurisdiction at all in such case, which is not admitted, Wilson, and all the other delinquent tax-payers, were necessary parties to the

cases in the United States Court. It was necessary, by proper allegations, to show that they owed the taxes in question, and to call on them, as defendants, to pay the same, and to attach the liability, in order to give the United States Court such jurisdiction as would be exclusive. This had not been done when the suit in the State court was commenced, and has not been done yet, as to any delinquent tax-payers, except Williams, Hill and Hardin. Wilson, and the other delinquents, were not parties to the proceedings in the United States Courts, and there was no allegation showing, specifically, who owed taxes. The subsequent possession of the tax books by the Receiver, Latham, did not make delinquents, parties, or give the court jurisdiction of the taxes due from them to the city, and vested in the State by the act, chapter 11, of 29 January, 1879, for the payment of the debts of the city.

Possession of certain books, called tax books, is not possession of the subject matter. As well say that possession of a merchant's account books, containing statement of indebtedness of A to the merchant, is possession of A's indebtedness to the merchant, and would confer jurisdiction of A and his indebtedness, in a suit between B and the merchant.

The act, chapter 71, of 1877, appendix, 64 relied upon by plaintiffs, R. 3, does not confer jurisdiction upon the Federal Courts over the subject matter. The power is conferred on the Chancery Court of the State exclusively, and does not profess to authorize the Federal Court to act in the premises. But the act itself is in conflict with the Constitution of the State in its most vital features, and therefore void. Section 1 of the act repeals the charter, and destroys the corpora-

tion. Section 4 empowers the Chancery Court, to direct the receiver to execute compromise bonds, which, when executed, shall be the valid bonds of the corporation. Here we have the court, through its officer, executing bonds after the death of the corporation, which are declared to be valid and binding obligations of the corporation. Who ever heard of a post mortem bond? The corporation is first put to death, and then the executioner issues bonds, which are called valid obligations of the dead corporation. Who ever heard of a court issuing bonds, and making contracts? This is purely a legislative function, one which the Legislature cannot devolve upon the court. For these and other manifest reasons, the 14, 15 and 16 causes of demurrer, assigned by defendant Meriwether, should have been sustained.

We submit that the Circuit Court cannot rightfully do any of these things, and, especially, it cannot levy taxes, or appoint officers to collect taxes already imposed; or subrogate the creditors of a dissolved municipal corporation to the lien previously held for taxes by the extinct corporation; or declare the debts of the extinct corporation a paramount lien upon the private property of the inhabitants, and subject the same to its payment; or seize upon the property used, and taxes levied for purposes of government, and apply them to the debts of the corporation; or enjoin suits in the State courts; or enjoin the defendant, Meriwether, from collecting said taxes.

For these, and many other errors apparent upon the record, we respectfully submit that the decree below should be reversed, and plaintiffs' bills be dismissed, with costs.

MINOR MERIWETHER,
Of Counsel for Appellant.

APPENDIX.

ACTS OF THE GENERAL ASSEMBLY OF TENNESSEE.

CHAPTER 92 OF ACTS OF 1875.

AN ACT to regulate and organize Municipal Corporations of certain population and for the increase and diminution of their powers.

* * * * * * * * * *

SECTION 63. That no such municipality shall assess, levy or collect a greater rate of tax than one dollar and sixty cents on each one hundred dollars' worth of taxable property in such city, for any and all purposes.

SEC. 64. That it shall be the duty of the General Council, immediately after the assessment of the property of the city for taxation, to make out what is known in legislative parlance, a budget and apportion the one dollar and sixty cents to defray the various items of expense incident to carrying on the city government; *Provided* that not more than one dollar or one per cent. shall be appropriated to defray the general expenses, such as police and fire departments, officers' salaries, water and lights, improving and repairing streets, etc.; and not more than sixty cents shall be appropriated to special purposes. Of this amount, twenty cents shall be appropriated to the payment of interest on the bonded debt; twenty-five cents shall be appropriated to providing a sinking fund to retire the bonded indebtedness; ten cents shall be appropriated to the maintenance of the city schools; and five cents shall be appropriated to the payment of judgments.

* * * * * * * *

SEC. 66. That in order to collect all the taxes due the cities and pay off all the indebtedness, the cities owe (preparatory to the taking effect of this act), all cities shall receive in payment of all taxes that may be due, or that have accrued up to the

first day of January, 1875, all their past due indebtedness, except bonds of the city; a special fund having been provided for their payment. But all taxes falling due after the first day of January, 1875, shall be payable in current funds, or in past due indebtedness for the current year in kind, or such as the tax for which it is received, might be applied after collection.

* * * * * * * *

SEC. 67. That all parties contracting with municipal corporations, shall not, by reason of their contracts, acquire any general claim against the corporation or city, but shall look solely to the sum set apart specially for the payment of their claims. And contracts made by municipal corporations, shall not be valid or binding, unless they specify the fund out of which they are to be paid, and then shall only constitute a liability to be enforced out of the special fund for that year, in which the contract was made, and the tax was levied, or assessed and collected. All persons dealing with any municipal coporation, shall be put upon enquiry as to its powers; and every act, contract or agreement, *ultra vires*, shall be null and void.

* * * * * * * *

SEC. 76. * * * All buildings and grounds owned by the cities and used exclusively for public purposes, such as for public parks, fire companies and fire engines, city water works, police stations, market and market houses, hospitals and their grounds, and such parts of the navy yard as are not leased or given to parties, and all such property so owned and used for public purposes, shall be exempt from execution or attachment; and all personal property owned and used for corporate purposes, such as fire engines, hose, hose carts, wagons, carts, mules, horses and implements used for the business of any and every department of the city government, in the business of the city; and all safes and furniture used for any office or department of the city government, and all bills receivable, taxes due, or moneys on deposit or in the treasury, shall be exempt from seizure or sale under attachment, execution or other legal process. The said city shall not be liable to garnishment, nor shall any property or effects of said city, be levied upon by garnishment.

* * * * * * * * * *

SEC. 81. Repeals former charters of city of Memphis.

SEC. 82. Act takes effect from its passage, March 20, 1875.

CHAPTER 18 OF ACTS OF 1877.

AN ACT to amend section 66 of an act, chapter 92, passed 20th March, 1875, applying to municipal corporations having more than thirty-five thousand inhabitants.

SECTION 1. That the first sentence of said section, be so amended, as to make the past due bonds of said municipal coporations, like other past indebtedness, receivable in payment of all taxes that have accrued up to the first day of January, 1875.

SEC. 2. That the second sentence of said section 66, be so amended as to read, "but all taxes falling due after the first day of January, 1875, shall be payable in current funds, or in past due indebtedness of the city for the current year in kind, or such as the tax for which it is received, might be applied after collection; but all taxes falling due in 1877 or thereafter shall be paid either in cash or the recognized compromised coupons and bonds of said corporation and not otherwise; *Provided* said compromise is effected; if not, then said taxes are to be paid as provided in the foregoing part of this section."

SEC. 3. Act takes effect from its passage, March 16, 1877. Approved March 20, 1877.

*CHAPTER 10 OF ACTS OF 1877.

AN ACT to authorize Municipal Corporations to settle their indebtedness.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the incorporated towns and cities of this State, are authorized to arrange their debt, or any portion of their debt, whether the same is due by bonds either matured or yet to become due, over due and unpaid coupons, being the interest due on bonds already issued, debts due on judgments, or any legal indebtedness arising from any source whatever; said arrangement to be based on a settlement at any rate agreed between said town or cities and their creditors, the rate of settlement, however, not to exceed fifty-five cents in the dollar on the face value of any judgments against said town or city outstanding and unpaid; and the rate of settlement for any other species or kind of indebtedness, to be fixed at any rate per cent., less than fifty cents on the dollar, as may be agreed between said towns or cities and the holders or owners of said indebtedness.

SEC. 2. That upon the surrender of any bond or bonds with

*Repealed March 31, 1879, chapter 248.

the coupons attached, which have not matured, or upon the surrender of any over-due and unpaid coupons, or matured bonds heretofore issued by said town or city, or upon the execution by any creditor, of the acquittance of any legal debt due from said town or city, the said town or city is hereby invested with power and authority to issue in its corporate name, a new bond or bonds, at the rate agreed as aforesaid, between said town or city and their creditors.

SEC. 3. That the new bonds shall have not less than twenty nor more than thirty years to run before maturity, and shall be issued in sums of $1000 each, with coupons attached, bearing interest at any rate not exceeding six per cent. per annum, payable at any point in the United States designated by said town or city; and any bonds issued under this Act, shall be signed by the Mayor and countersigned by the Register, Recorder or Secretary of the Corporation, with the corporate seal affixed, and registry of the date, number, etc., of the bonds issued, as well as a registry of the date, number, etc., of the bonds, coupons, or other indebtedness surrendered for cancellation, shall be accurately kept and transcribed in the books of the Corporation.

SEC. 4. That no bond shall be issued under the provisions of this Act, unless the Board of Aldermen and Councilmen, General Council, or other legislative body or bodies, where there is more than one, by what name or names soever called in the charter of incorporation, shall by ordinance duly passed and approved by the Mayor, authorize the issue of said bonds, and specify the terms on which said settlement is to be made, the same, however, not to exceed fifty-five cents in the dollar in the compromise of judgments, and a less rate per cent., not exceeding fifty cents on the dollar on other kinds of indebtedness, as may be agreed with the creditors.

SEC. 5. That in consideration of the surrender on the part of the creditor of a portion of the debt due to him from said town or city, it is expressly declared, that the coupons attached to the bonds issued under this Act, and also the bonds if not paid at maturity, shall be receivable at par, by the town or city issuing the same, in payment of all taxes levied on real or personal estate, or in payment of any privilege or license tax, or in payment of any other debt or demand due and owing to said town or city, it being the intent of this Act, that any over-due and unpaid bond or coupon issued as aforesaid, shall be always receivable at *par*, whensoever, by whomsoever, and on what

account soever tendered, in satisfaction of all taxes, charges, rates or assessments levied or imposed on persons, privileges or property, or in satisfaction of any other debt or demand due and owing to said town or city.

SEC. 6. That any Municipal Corporation issuing bonds under this Act, shall be prohibited from issuing scrip or any other bonds, while their compromise bonds are outstanding and unpaid; and that an ample interest and sinking fund tax shall be levied annually and collected, to meet the maturing interest and to pay the bonds on maturity; and that this tax shall be faithfully applied to the objects proposed, three sinking fund commissioners shall be appointed, to whom the sinking fund tax shall be paid, and three interest commissioners shall be appointed, to whom the interest tax shall be paid; the commissioners in both cases to give bonds for the faithful execution of their trusts.

SEC. 7. That towns, cities or municipal corporations availing themselves of the provisions of this Act to compromise their indebtedness, shall not for five years thereafter, levy a higher rate of taxation than one per cent. for general purposes, nor at *any* time thereafter, while these bonds are outstanding and unpaid, levy for said purpose a tax exceeding one dollar and twenty-five cents on the hundred dollars.

SEC. 8. That the provisions of this Act shall form a part of the contract with the holder of any bonds issued as aforesaid on the compromise of indebtedness.

SEC. 9. Act takes effect from its passage, March 8, 1877. Approved March 14, 1877.

*CHAPTER 71 OF ACTS OF 1877.

AN ACT to enable Municipal Corporations having more than Thirty-five Thousand Inhabitants, to settle their indebtedness.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That section 34 of an act passed March 20, 1875, which reads, "That the legislative powers of such cities shall be vested in a Mayor, a Board of Aldermen, and a Board of Common Councilmen, who together shall be styled the General Council of such cities, and shall be elected as shall be hereinafter provided," be, and the same is hereby repealed.

SEC. 2. That the power to levy taxes of every description,

*Repealed March 31, 1879. chapter 248.

and for any and every purpose whatever, is hereby taken away from said Municipal Corporations, and each and every officer and representative thereof, and said taxing power lodged in the Legislature of the State, and not elsewhere; and that by virtue of Article 11, section 9 of the Constitution of the State, in addition to the powers already conferred, the Chancery Court, for the purpose of settling the indebtedness of Memphis and other municipal corporations containing more than thirty-five thousand inhibitants, may appoint a Receiver, and exercise such other powers as are hereinafter set forth.

SEC. 3. That upon the application of any person or persons, who are the holders and owners of any past due and unpaid bonds, coupons, or other indebtedness of said Municipal Corporations, not less in amount than one hundred thousand dollars, it shall be the duty of the Chancery Court to appoint a Receiver for said Municipal Corporation, who, as the officer of the court, and not otherwise, shall, under the order and instruction of the court, act for such Municipal Corporation.

SEC. 4. That said Receiver, together with two other citizens and property-holders of said Corporation, to be appointed by the court, shall constitute a Commission to settle and compromise the indebtedness of said Municipal Corporation, by funding the same, at a rate not exceeding fifty-five cents in the dollar on judgments, and not exceeding fifty cents in the dollar for bonds or coupons past due, and at a less rate for the less valuable class of said indebtedness; and upon their action being confirmed by the court, the court shall direct the Receiver to execute the necessary and proper compromise bonds and contracts; which bonds when so executed, shall to all intents and purposes be the valid and binding obligations of said Corporation; but it is understood and agreed that the holders of any of the bonds issued by the Receiver as provided in this Act, shall have the option, after two years, to fund or exchange them at par, into bonds payable thirty years after the date of their issue, and bearing interest at the rate of six per cent. per annum; said bonds shall be of the denomination of one thousand dollars each, and numbered consecutively from one to twenty-five hundred; the total amount of bonds issued under this Act, shall not exceed two and one-half millions of dollars.

SEC. 5. That in order to enable said Commission to make a settlement of said Municipal indebtedness, as contemplated, it is hereby enacted:

Sub section

1. That all bonds and matured coupons and judgments, and all paving scrip certificates issued by said Corporation, and all receipts for money paid by tax-payers to paving contractors for making Nicolson and stone pavement, etc., by virtue of any contracts with said Corporation, may be funded at such a rate not exceeding the maximum above mentioned, and into such bonds, bearing not exceeding six per cent. per annum interest, as may be agreed on between the parties, the holder and said Commission.

2. That all matured bonds and coupons, issued by virtue of any agreement made in pursuance of this Act, shall be receivable for taxes, city dues, and indebtedness of every kind.

3. That said Municipal Corporations are hereby prohibited from issuing scrip at any time, or bonds, while any bonds issued under this Act are outstanding, except such as may be issued in exchange, as hereinbefore provided in section 4 of this Act.

4. That, hereafter, for said Municipal Corporations, there shall not be levied a higher rate of taxation for general purposes, as defined in the charter, than one per cent. for the next five years, and at no time thereafter for said purposes, a tax exceeding one dollar and twenty-five cents on the hundred dollars.

5. That an ample interest and sinking fund tax shall be levied annually, and collected, to meet the maturing interest and retire and pay the bonds issued under this Act, and that this tax shall be faithfully applied to the object proposed. The sinking fund tax shall be paid into the hands of three sinking fund Commissioners, and the intcrest tax shall be paid into the hands of tnree interest Commissioners; each and all of said sinking fund and interest Commissioners shall be appointed by the court, and shall be citizens of established integrity and responsibility, who shall give bond in sufficient amounts to cover the funds coming into their hands, and take an oath to faithfully execute their trusts; said bonds to be fixed by the court.

6. That the provisions of this Act may be made a part of the contract with the holders of any bond or coupon issued by reason of any agreement made under this Act.

7. That so much of sections 38, 63, 64 and 66 of an Act passsed March 20th, 1875, and all other Acts as are in conflict with the provisions of this Act, are hereby expressly repealed.

SEC. 6. That the court shall appoint the interest and sinking fund Commissioners, and supply all official vacancies as

they may occur, in the different Municipal Departments, which as to the ordinances affecting the same and in every other respect remain unaffected, except in so far as they may conflict with the enforcement of the provisions of this Act, in which event the court will so order as to carry out the true intent and purposes of this Act: *Provided, however*, that all the offices not abolished by this Act be filled by a popular vote, for the term of two years, at the time designated in the charter for the next regular municipal election.

SEC. 7. That to carry into effect the true intent and provisions of this Act, the Legislature of the State hereby levies an annual tax of one dollar and sixty cents on each one hundred dollars worth of taxable property and values within said Municipal Corporation (including the school tax, which shall not exceed ten cents), to be applied under the order and directions of the court in the payment of current expenses, interest on compromise bonds, and the extinguishment of the indebtedness of said Municipal Corporations.

SEC. 8. That this Act shall take effect, and not before, when the sum of the tax mandamuses outstanding against any one of said Municipal Corporations, shall amount in the aggregate to the sum of ($850,000) eight hundred and fifty thousand dollars.

Passed March 19, 1877. Approved March 23, 1877.

CHAPTER 10, OF ACTS OF 1879.

AN ACT to repeal the Charters of certain Municipal Corporations, and to remand the Territory and Inhabitants thereof to the Government of the State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That an Act passed December 1, 1869, entitled "An Act to Reduce the Charter of the City of Memphis, and the several Acts amendatory thereof into one Act," being Chapter 26 of the Private Acts of 1869 and 1870; also Chapter 47, to the Public Acts of 1873, entitled "An Act to Amend the Charters of all incorporated towns and cities in the State," passed March 18, 1873; also, an Act entitled "An Act to Incorporate the Town of Memphis," passed December 9, 1826; also an Act entitled "An Act to extend the limits of the Corporation of the Town of Memphis, and for other purposes," passed October 19, 1832; also an Act entitled "An Act to Amend the several Acts incorporating the Town of Memphis," passed December 7, 1843; also, an Act entitled "An Act to Reduce the

several Acts incorporating the Town of Memphis into one Act, and to amend the same," passed January 11, 1848; also, an Act entitled "An Act to incorporate into one Act the several Acts incorporating the City of Memphis and the Town of South Memphis," passed January 6, 1846, and January 21, 1848, and to "unite the said towns into one, and extend the boundaries thereof," passed December 3, 1849; also, the section of an Act entitled "An Act to Amend an Act entitled An Act to Incorporate the Town of Tazwell," passed January 2, 1830, passed January 28, 1852; also, an Act entitled "An Act to Amend the Charter of the City of Memphis," passed February 29, 1856; also, an Act entitled "An Act to Amend the Charter of the City of Memphis, and for other purposes," passed February 20, 1860; also, an Act entitled "An Act to Amend the Charter of the City of Memphis," passed November 24, 1866; also, an Act passed in amendment of the foregoing Acts, and also any other Acts creating into a body politic and corporate the inhabitants of a certain territory lying within the county of Shelby, by the name of the City of Memphis, the Mayor and Aldermen of Memphis, or other corporate name whatever, or Acts amending the said Acts of incorporations be, and the same are hereby, each and every one of them, repealed, and all offices created and held under and by virtue of any of said Acts are abolished.

SEC. 2. That the Charters and amendments thereof of all municipal corporations within the State, having a population of 35,000 inhabitants or over, by the Federal census of 1870, be, and the same are hereby, repealed, and all municipal offices held under them are abolished.

SEC. 3. That the Charters and amendments thereof of all municipal corporations within this State having 35,000 inhabitants or over, at the date of the passage of this Act, be, and the same are hereby, repealed, and all municipal offices held thereunder are abolished. The Governor of the State will ascertain and declare, by proclamation, to what corporations this section applies; said proclamation shall be conclusive evidence of its truth, and shall be made within ten days from the passage of this Act.

SEC. 4. That all of the sections, from Section 33 to Section 80, both inclusive, of an Act entitled "An Act to regulate and organize Municipal Corporations of certain population, and for the increase and diminution of their powers," Chapter 92, approved 23d March, 1875, and all other Acts and parts of Acts in conflict with this Act, be, and the same are hereby, repealed; all the other sections of said Chapter 92, and especially Section

81 of said Chapter, being left in full force; and the population within the territorial limits as now defined, and the territory of all municipal corporations heretofore governed under and by virtue of said repealed Sections 33 to 80 inclusive, are hereby resolved back into the body of the State, and all offices held under and by virtue of said repealed sections are hereby abolished; and all power of taxation, in any form whatever, heretofore vested in or exercised by the authorities of said municipal corporations by virtue of any of the Acts of incorporation hereinbefore recited, or otherwise, is forever withdrawn and reserved to the Legislature; and the public buildings, squares, promenades, wharfs, streets, alleys, parks, fire engines, hose and carriages, horses and wagons, engine houses, engineer instruments, and all other property, real and personal, hitherto used by such corporations for municipal purposes, are hereby transferred to the custody and control of the State, to remain public property, as it has always been, for the uses to which said property has been hitherto applied. And no person holding office under and by virtue of any of said repealed sections, or any of the Acts above recited, shall, from and after the passage of this Act, exercise, or attempt to exercise, any of the powers or functions of said office.

SEC. 5. That this Act take effect from and after its passage, the public welfare requiring it.

Passed January 29, 1879.

J. R. NEAL,
Speaker of the Senate.

H. P. FOWLKES,
Speaker of the House of Representatives:

Approved January 31, 1879.

ALBERT S. MARKS,
Governor.

CHAPTER 11—ACTS OF 1879.

A BILL to establish Taxing Districts in this State, and to Provide the means of local government for the same.

SECTION 1. That the several communities embraced in the territorial limits of all such municipal corporations in this State as have had, or may have their charters abolished, or as may surrender the same under the provisions of this Act, are hereby created taxing districts, in order to provide the means of local government for the peace, safety and general welfare of such districts.

SEC. 2. That the necessary taxes for the support of the governments thus established shall be imposed directly by the General Assembly of the State of Tennessee, and not otherwise. In administering the affairs, and for providing the means of local government in said districts, the following agencies and governing instrumentalities are hereby established:

1st. A Board of Fire and Police Commissioners, to be selected and qualified in the manner hereafter provided.

2d. A Committee on ordinances or local laws—to be known as the "Legislative Council of the Taxing District," and which shall consist of the Commissioners of the Fire and Police Board, and the Supervisors of the Board of Public Works.

3d. A Board of Health, to consist of the Chief of Police, a health officer, and one physician, who shall have been in active practice for the period of five years next preceding his appointment, who shall be an inhabitant of the Taxing District, and for five years a resident of the county, and who shall be *ex-officio* President of the Board.

4th. A Board of Public Works, to consist of five Supervisors of Public Works, three of whom shall be chosen by the qualified voters of the people of the Taxing District, and two appointed as hereinafter provided, and shall serve for a term of two years.

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SEC. 11. That the diversion of any portion of any of said taxes, or wharfage dues, or other funds, from the purpose for which they were levied, by any of the Commissioners, or by the Trustee, shall be a felony, for which the guilty party upon conviction shall suffer imprisonment in the Penitentiary at hard labor for two years.

SEC. 12. That said Commissioners shall not issue any bonds, notes, scrip, or other evidences of indebtedness, and shall in no event contract for work, or material, or services, in excess of the amount of tax levied for such work, material or service for that year, and parties contracting with said Commissioners for work, material or services, shall look alone to the tax for that purpose for that year, and no subsequent tax shall be levied to meet the deficit, and no property, real or personal, held by said Commissioners for public use, shall ever be subject to execution or attachment, or seizure under any legal process, for any debt created by said Commissioners, and all taxes due, or moneys in the hands of the County Trustee, or on deposit, shall be exempt

from seizure under attachment, execution, garnishment, or other legal process; nor shall said Commissioners or the County Trustee be liable to garnishment. And said Commissioners, and said Trustee, and other governing agencies employed by this Act, are expressly prohibited from levying any taxes for any purpose, that power being reserved to the Legislature, and no writ of mandamus or other process shall lie to compel them to levy any taxes; nor shall the said Commissioners, or said Trustee, nor the local government created by this Act, pay or be liable for any debt created by said extinct corporation, nor shall any of the taxes collected under this Act ever be used for the payment of any of said debts.

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SEC. 14. That the fire engines, hose and carriages, horses and wagons, engine houses, public buildings, public squares, parks, promenades, wharves, streets, alleys, engineer instruments, and all other property, real and personal, hitherto used by such corporations for purposes of government, are hereby transferred to the custody and control of said Board of Commissioners, to remain public property, as it has always been, for the uses to which said property has been hitherto applied, and that all indebtedness for taxes or otherwise, whether in litigation or otherwise, due to the said municipalities, shall vest in and become the property of the State, to be disposed of for the settlement of the debts of said extinct municipalities, as shall be hereafter provided by law; and all suits now pending shall be prosecuted to final determination under the provisions of this Act, without change of parties, and suits brought by said taxing districts shall be brought in the name of the President of Fire and Police Commissioners; *Provided*, however, that the taxes heretofore assessed as privilege taxes, and set apart for the payment of the police and firemen, shall be paid out, as collected under the provisions of this Act, to the said police and firemen; and, *provided further*, that such taxing districts, through the President of the Board of Fire and Police Commissioners, are hereby authorized to employ a competent attorney to attend to the legal business of the same, at a salary of two thousand dollars, to be paid in monthly installments.

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SEC. 25. Act takes effect from its passage.

Passed 29 January, and approved 31 January, 1879.

× amended next page

CHAPTER 84, ACTS OF 1879.

AN ACT to amend an Act entitled "An Act to establish Taxing Districts in this State, and to provide the means of Local Government for the same," passed January 29th, 1879, and approved January 31st, 1879.

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SEC. 5. That Section fourteen (14) of the Act hereby amended be amended so as to read: That the fire engines, hose and carriages, horses and wagons, engine houses, public buildings, public grounds, parks, promenades, wharves, streets, alleys, engineer's instruments, and all other property, real and personal, hitherto used by such corporations for purposes of government, are hereby transferred to the custody and control of said Board of Commissioners, to remain public property, as it has always been, for the uses to which said property has hitherto been applied, and that all indebtedness for taxes or otherwise, whether in litigation or otherwise, due to the said municipalities, shall vest in and become the property of the State, to be disposed of for the settlement of the debts of said extinct municipalities, as shall be hereafter provided by law, and suits brought by said taxing districts shall be brought in the name of the President of the Board of Fire and Police Commissioners; *Provided, further*, that said Board of Fire and Police Commissioners are hereby authorized to employ a competent attorney to attend to the legal business of the taxing district, at an annual salary of $2000 dollars, to be paid in monthly installments.

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SEC. 14. Act takes effect from its passage.

Passed March 12, 1879, and approved March 13, 1879.

CHAPTER 92 OF ACTS OF 1879.

AN ACT to collect and dispose of the Taxes assessed for Municipal Corporations in this State whose charters have been or may be repealed, or which may surrender their charters, and to provide for the compromise and make settlement of the debts of such extinct Municipal Corporations respectively.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That as to municipal corporations in this State, whose charters may have been repealed at the time this Act takes effect, and, from time to time, as the charters of other municipal corporations may be repealed or surrendered, the Governor of the State shall appoint an officer for such extinct corporations respectively, to be known as a Receiver and Back-

Tax Collector, who shall take the oath required of other collectors of public revenue, and shall give bond with good sureties, to be approved by the County Court of the county in which the extinct corporation was situated, in such sum as the County Court may prescribe; and it shall be the duty of the Quarterly Court at each quarterly term thereof, to see that the bondsmen continue good and adequate for the full protection of all persons interested, and for that purpose, from time to time, to require further and additional sureties whenever such court deems the same necessary for the protection of those interested.

SEC. 2. That such Receiver and Back-Tax Collector shall make to the Chancery Court every three months a full, clear and complete statement, showing all taxes collected and settled, and all in his hands that remain to be collected and settled. He shall, at the end of each month, pay into the Treasury of the State the whole sum by him collected, less his compensation. He shall distinguish, in making such payments, the respective sources from which the moneys paid in are derived, showing what is collected from taxes for general purposes, and what for taxes for special purposes, designating the particular or special purpose, so that the same may be kept separate in the State Treasury, in order that the Treasurer may pay the same according to any lien, priority or equity, if any, which may be declared by the Chancery Court touching any of said funds, in favor of any creditor or class of creditors.

SEC. 3. That the Back-Tax Collector and Receiver shall, as soon as appointed, enter upon the duties of his office. It shall be his duty, and he is hereby empowered, to take possession of all books, papers and documents pertaining to the assessment and collection of the taxes embraced by this Act.

SEC. 4. That for the purpose of collecting the revenue embraced in the provisions of this Act the Receiver and Back-Tax Collector is empowered and authorized to file a general creditors' bill in the name of the State in behalf of all creditors against all the delinquent tax-payers who owed taxes to the extinct corporation at the time of the repeal or surrender of its charter, which bill shall be filed in the Chancery Court of the county in which such extinct corporation was situated. All the said delinquents in any one county shall be embraced in one subpœna to answer, and for the same the clerk shall receive a fee of five cents for each defendant named in the subpœna except for the first, and for that, the fee allowed in other cases; *Provided*, he shall not receive exceeding twenty-five dollars for such subpœna, and the Sheriff, for serving the

same, shall receive for each defendant ten cents, except the first, and for that, the fee allowed for like services in other cases. Publication for non-residents shall embrace in the same publication, if practicable, all non-resident defendants—the object being to make one proceeding embrace the whole taxes of such extinct corporation. All pending suits are to be received in the name of the State, and consolidated with the general proceedings herein provided for, and when so consoli dated, to form part of said general proceeding. The court in which said proceeding may be instituted shall have power to settle and adjust all equities, priorities and liens, and to give all relief both to the defendants and the creditors that might be given if there were as many separate suits as there are creditors and delinquent tax-payers. Such court shall have power to enforce all liens upon property for the payment of such taxes, and to order and make all sales of property necessary to the collection of such taxes. The taxes embraced by this Act, and which it provides for, are all taxes imposed by said extinct municipalities up to the time of the repeal or surrender of their charter. The Chancery Court, in the exercise of the jurisdiction conferred by this Act, shall have all the powers possessed by such courts in the administration of the estates of insolvent, natural or corporate persons. If it shall appear that the taxes imposed in any case were excessive, the court shall have power to reduce the assessment so as to make it fair and just.

SEC. 5. That back-taxes imposed prior to the year 1875, may be settled in the valid indebtedness of such extinct municipalities as provided by Section 66 of an Act passed March 20, 1875, entitled, "An Act to regulate and organize Municipal Corporations of certain population, and for the increase and diminution of their powers," and, in addition to said Act, as follows, to wit, in valid bonds, whether due or not, and due coupons, and any other valid debt of such municipality with accrued interest, whether in the shape of scrip, warrants, judgments, ledger balances, paving certificates or receipts for money paid by back-tax payers to paving contractors or to the said corporation for Nicolson or stone paving done under former laws and ordinances authorizing front foot assessments for paving, and the Back-Tax Collector and Receiver is hereby required to accept the same at the following rates, to-wit, bonds known as compromise or funded bonds shall be received at their face value, all other bonds, scrip, certificates of indebtedness, past due coupons, ledger balances, etc., shall be received at fifty cents on the dollar, or one-half their face value, and all

judgments shall be received at fifty-five cents on the dollar of their face value; *Provided*, compromise bonds issued in lieu of any bonds which have been pronounced invalid by the Supreme Court of this State shall be excluded so far as such invalid bonds shall compose a part or the whole of such compromise bonds; and compromise bonds issued in whole or in part in lieu of bonds liable by implication, on account of over issue or otherwise, to a similar decision of the Supreme Court, shall not be received so far as they may be composed in whole or in part of such suspected bonds, until the validity of such suspected bonds shall be determined by the Supreme Court of the State, and the aforesaid bonds, coupons, scrip, etc., shall be received with interest added, if there be interest, in payment of taxes imposed prior to 1875, whether before or after judgment or decree against the delinquent tax-payers in satisfaction of such taxes, or by way of set-off against taxes due such extinct municipalities, whether acquired before or after suit brought against a delinquent tax-payer. But before being required to accept the same, such Back-Tax Collector and Receiver may, if he chooses, and if he suspect the debt not valid, or if any creditor gives him notice that it is not, then before taking it he shall, on motion in the general suit, have the questioned settled by the Chancellor whether such indebtedness is valid or not, and it shall be the duty of such Receiver and Back-Tax Collector to receive in payment of taxes imposed after 1874, any of the aforesaid valid indebtedness of the extinct municipality, when there is no lien or equity requiring the same to be paid in current money, and whenever any question may be raised as to the right of the tax-payer to pay taxes imposed after 1874 in the said indebtedness of the extinct municipality, the court shall determine the same on motion at the instance of the parties interested; *Provided*, however, that in every case where a bond of any kind or charcter, whether it be a compromise bond or other kind of bond, is received or taken up before maturity, all immatured interest coupons shall be surrendered with it, and no bond of any kind shall in any case be received before maturity which has the interest coupons detached, and nothing shall be allowed such immature coupons. All evidences of indebtedness taken by said Receiver in payment of taxes shall be cancelled by him, as soon as the same comes into his hands, under the supervision of the Chancellor, and in such manner as he may order and decree.

SEC. 6. That when collections shall be made, or taxes paid, as herein provided, or in current or in lawful money of the

United States, it shall not be lawful for such Receiver and Back-Tax Collector to coerce payment of a greater sum than one-fifth part annually, so as to distribute the whole through five equal annual installments. The said period of five years shall begin from the time of the appointment and qualification of the Back-Tax Collector and Receiver, and all costs of condemnations, penalties and charges are hereby remitted, in all cases where taxes are collected under this Act; *Provided*, however, that nothing herein contained is intended to interfere with any vested right which entitles the party having such right to a speedier collection, but only to extend the indulgence where the State has the power to do so without interfering with vested rights.

SEC. 7. That funds collected under this Act shall be paid out by the Treasurer of the State, from time to time, to those entitled, in such manner as the Chancery Court may adjudge and decree, on the warrant of the Receiver, countersigned by the Chancellor.

SEC. 8. That the compensation of the Back-Tax Collector and Receiver of the extinct corporation of Memphis shall be two thousand dollars per annum, but after two years the County Court shall fix the salary of said officer, not to exceed two thousand dollars per annum, and of such other municipalities as this act may apply to, such sum as the Quarterly Court of the county may allow, in no case to exceed the sum that would be paid to the County Trustee for like service.

SEC. 9. That the Receiver and Back-Tax Collector shall have power to employ an assistant at a compensation not to exceed one hundred dollars per month during the time he is in actual service.

SEC. 10. That publication shall make all creditors parties, with the right to relief as fully as if especially named, and they may at any time file with the Clerk of the Court their claims, or attested copies, retaining the original if they desire, subject to be produced, however, as the Court may order, and placed in the custody of the Clerk. The simple filing of said claims, respectively attested by the affidavit of the owner or his agent or attorney, shall be proof of such claims in common form, and if not contested, entitle the same to payment *pro rata;* and for administering the oath in proving such claims in common form and filing the same, the Clerk shall receive the sum of ten cents, to be paid at the time of making the oath and filing the claim. If any creditor, or the Receiver and Back-

Tax Collector shall desire to contest the validity in whole or part of any claim filed in common form, he may do so in a summary way in the progress of the cause. The opposing parties in such contest shall reduce the facts to writing that are necessary to its determination, and file the same, and when filed they shall become part of the record, and the Court shall have power, upon motion, and in a summary way, to hear and determine all questions of priority of payment in the progress of the cause. When any party is dissatisfied with the decision of any litigated question, he may have such question reheard upon appeal or writ of error in the Supreme Court, but so much of the record only as pertains to that particular litigation shall form the transcript and record for the Appellate Court, and the costs shall be paid by the parties to such appeal as the Appellate Court may direct, unless the Receiver and Back-Tax Collector is a party to the litigation on behalf of creditors generally, and in that case the costs may, if the Appellate Court think proper, be charged to the whole, or to some particular fund, as right and justice may require.

SEC. 11. That nothing herein shall be construed to prejudice the right of redemption now allowed by law to any person for redeeming land hitherto sold for taxes, or that may hereafter be sold under the provisions of this Act, and as to all lands within the limits of such extinct municipalities heretofore sold for taxes and bid off in the name of the State or the city, the former, or their heirs or vendees, shall have five years from and after the passage of this Act within which to redeem the same, but until such redemption, such property shall be and remain the property of the State, and the owners, their heirs or vendees shall alone have the right to redeem.

SEC. 12. That it is the duty of the Attorney General of the district wherein is situated the taxing district, as provided for in the Act aforesaid, and they are hereby required immediately to suggest of record in all the courts of this State, and of the United States, where suits are pending against said municipalities, the repeal of the charters of the same.

SEC. 13. That the proceedings in all suits now pending for the collection of taxes due such extinct municipalities shall be suspended until the filing of the general creditors' bill and the consolidation provided for in this Act, and said general creditors' bill shall be prepared and filed by the Receiver and Back-Tax Collector as soon as practicable, and within six months from his appointment and qualification, and to enable him to

prepare said bill he is authorized to employ, under the direction of the Chancellor, any cash funds that may come into his hands in obtaining any necessary abstracts of title.

SEC. 14. That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed March 13, 1879.

Approved March 14, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 916.

MINOR MERIWETHER,

RECEIVER AND BACK-TAX COLLECTOR OF THE CITY OF MEMPHIS, ET AL., APPELLANTS,

VERSUS

ROBERT GARRETT & SONS,

ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE, IN EQUITY.

BRIEF AND ARGUMENT FOR APPELLANT,

MINOR MERIWETHER, Receiver, &c.

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BRIEF AND ARGUMENT.

Without discussing seriatim the various grounds set forth in the motion of Meriwether to vacate the order of 12th of February, 1879, appointing T. J. Latham Receiver, and the special causes of demurrer to the bills original and supplemental, and the various grounds on which division of opinion of the Judges below has been certified to this Court, and the various errors assigned in the brief of Minor Meriwether, which discussion would involve much repetition, we shall present to the Court a general argument, supported by authorities, which will be easily applicable to all the salient points of this case.

1st. We hold that the Act of the Legislature of the State of Tennessee, entitled "An Act to repeal the charters of certain municipal corporations, and to remand the territory and inhabitants thereof to the government of the State," passed January 29, 1879, and approved January 31, 1879, chapter 10, and which Act, in terms, "as shown therein, repealed the charter and all laws incorporating the city of Memphis, was and is a valid law; and is not contrary to the Constitution of the State of Tennessee, or to the Constitution of the United States, as against creditors holding bonds and debts contracted prior to the repeal." See appendix to Meriwether's brief for these Acts.

So far as the Constitution of the State of Tennessee is concerned, the validity of the Acts of the Legislature repealing the charters of Memphis, and establishing another local government over its inhabitants, has been settled by the decision of the Supreme Court of Tennessee in the case of *Luehrmann* v. *The Taxing District*, a manuscript copy of the opinion of the

said Court being before your Honors. To interfere or reverse this decision, would be a departure from a long series of decisions of your Court, among which we cite:

Leffingwell v. *Warren*, 2 Black, 599, wherein the Court says: "The construction given to a State statute by the highest judicial tribunal of such State, is regarded as a part of the statute, and is as binding upon the Courts of the United States as the text."

Keith v. Clark, 7 Otto U. S., 468.
Railroad Company v. Gaines, 7 Otto U. S., 709.

The question of the consonance of these Acts of the Legislature with the *State* Constitution being settled, we will now consider their relation with the Constitution of the United States.

It is well settled that a municipal government is only part of the government of the State. The political powers of the State government may be delegated to the authorities of a municipality. When the Legislature grants a charter to a city, it does so without being asked by the people of the city, and without their acceptance or consent; and in the same way, when a Legislature amends, alters or abrogates such a charter, it can do so without the consent of its inhabitants. It being part of the political government of the State, the Legislature is alone responsible.

This power of the Legislature of a State has been recognized by numerous decisions of our judicial tribunals—Federal as well as State—among which we refer to:

Dartmouth College v. Woodward, 4 Wheat., 629.
United States v. Railroad Co., 17 Wall., 522.
Commissioners, &c., v. Lucas, Treas., 3 Otto, 108.
New Orleans v. Clark, 5 Otto, 644.
McKim v. Odom, 3 Bland, 407.
The People v. Simeon Draper, 15 N. Y., 544.
11 Humphrey's Tenn., 583.
5 Heisk. Tenn., 527.

How far the Legislature of the State of Tennessee is trammeled in the exercise of this well recognized power of repealing

the charter of the city of Memphis, by that provision of the Federal Constitution, which forbids legislation which impairs the obligation of contracts, on account of the indebtedness it incurred prior to the repeal, is one of the main questions in this case for the consideration of the Court.

It was not the purpose of the State of Tennessee that the debts of the city of Memphis should be extinguished, or in anywise diminished by its legislation in regard to the city of Memphis. On the contrary, the legislation attempts to preserve the debts in their integrity, and provided means for the application of the assets of the city (many of which were not before liable to these debts) to their payment.

The Act of January 29, 1879, chap. 11, provides:

"That all indebtedness, for taxes or otherwise, whether in litigation or otherwise, due to the said municipalities, shall vest in, and become the property of the State, to be disposed of for the settlement of the *debts* of said extinct municipalities, as shall be hereafter provided by law."

And the subsequent Act of the 13th of March, 1879, chap. 92—providing for the appointment of a Receiver and Back-Tax Collector, who was authorized and required to collect all back-taxes and indebtedness due said extinct municipalities, and pay the same into the State Treasury, to be applied, under the direction of the Chancery Court, to payment of their creditors in the order of their priorities and equities, regard being had to the vested rights, if any, of such creditors—was the subsequent legislation provided for by the Act of January 29, 1879.

The debts of the city of Memphis still exist, and if the means of payment already provided by the Legislature of Tennessee for their payment fail in their purpose, whether judgments can be had against the newly created corporation called the "Taxing District of Memphis" or not, there is no doubt but what the Legislature can compel their payment by its assessment of local taxes on the inhabitants of the District within the boundaries of the old city, whenever it sees proper to do so, and it is a legal presumption that the Legislature will do its duty. See Senate Joint Resolution No. 25, March 1, 1879.

This position is so clearly sustained and reasoned out in the

opinion of this Court in the case of *New Orleans* v. *Clark*, 5 Otto, 644, that we cite the language:

"Equitable claims which had existed against the dissolved city would continue as before, and be equally subject to legislative recognition and enforcement, or their payment might be required, as in this case, by the act of annexation. The power of taxation which the Legislature of a State possesses, may be exercised to any extent upon property within its jurisdiction, except as specially restrained by its own, or the Federal Constitutions, and its power of appropriation of the moneys raised, is equally unlimited. It may appropriate them for any purpose which it may regard as calculated to promote the public good. Of the expediency of the taxation or the wisdom of the appropriation, it is the sole judge. The power which it may thus exercise over the revenue of the State, it may exercise over the revenues of a city, for any purpose connected with its present or past condition, except as such revenues may, by the law creating them, be devoted to special uses; and in imposing a tax, it may prescribe the municipal purpose to which the moneys raised shall be applied. A city is only a political subdivision of the State, made for the convenient administration of the government. It is an instrumentality with powers more or less enlarged according to the requirements of the public, and which may be increased or repealed at the will of the Legislature. In directing, therefore, a particular tax by such corporation, and the appropriation of the proceeds to some special municipal purpose, the Legislature only exercises a power through its subordinate agent, which it could exercise *directly*, and it does this only in another way, when it directs such corporation to assume and pay a *particular claim* not legally binding for want of some formality in its creation, but for which the corporation has an equivalent."

See, likewise, *Board of Commissioners, etc.*, v. *Lucas, Treasurer*, 3 Otto, 108.

The debts of the old city are preserved by the act of the Legislature, and the only remedy for their collection affected by the legislation of the State of Tennessee in question is the remedy of *mandamus*, if the Circuit Court may issue that writ to a municipal corporation.

We do not think that it is contended for by appellees; at any rate we do not think they can cite any statute law of Tennessee, which provided the remedy of mandamus for the collection of any debt set forth in their bills. Neither can they

cite any statute *cotemporaneous* with the authority on which the municipal debt is based, requiring the levy of special taxes for the payment of the principal of the debts. The Acts of the Legislature providing for the taxation will, we think, be found to be subsequent to the creation of the debt; and it is upon the faith of this subsequent legislation, that the Courts awarded writs of mandamus on some of the debts sued on.

Now, if it could be said in any case that the remedy of mandamus as to the sovereign power of taxation, is a vested right in a creditor, it cannot be held such as to these debts, which were incurred when no provision for special taxation had been made by the Legislature.

In the case of *Memphis* v. *United States*, 7 Otto, 295, this Court says:

"But it is not so clear that when a new remedy is authorized after a contract has been made, that remedy may not be wholly taken away by the Legislature before any vested rights have been acquired under it. In such a case, the parties did not contract with reference to it, and it did not enter into their agreement. It had nothing to do with the obligation they assumed."

But we hold, that even though special taxes were provided for, cotemporaneous with the authority for the city, there would be no violation of the obligation of the contracts in the statute changing the taxing power, from the General Council of the city of Memphis, to the Legislature of the State of Tennessee.

In the case of *Heine* v. *The Levee Commissioners*, 19 Wall., 655, the taxing power when the debt was created was vested in certain Levee Commissioners, by the laws of Louisiana, and by subsequent legislation of that State, the taxing power ceased, and the Court refused to exercise such power.

The Court says: "The power we are here asked to exercise, is the very delicate one of taxation. This power belongs in this country to the *legislative* sovereignty, State or National. In the case before us, the National sovereignty has nothing to do with it. The power must be derived from the Legislature of the State. So far as the present case is concerned, the State has delegated the power to the Levee Commissioners. If that body has ceased to exist, the remedy is in the Legislature, either to assess the tax by special statute, or to vest the power in

some other tribunal. It certainly is not vested, as in the exercise of an original jurisdiction, in any Federal Court. It is not only not one of the inherent powers of the Court, to levy and collect taxes, but it is an invasion by the judiciary of the Federal government, of the *legislative functions* of the State government."

So in the *Board of Commissioners* v. *Lucas, Treasurer*, 3 Otto, 108, this Court says:

"Between the State and municipal corporations, such as cities, counties and towns, the relation is different from that between the State and the individual. Municipal corporations are mere instrumentalities of the State for the convenient administration of government; and their powers may be qualified, enlarged, or withdrawn at the pleasure of the Legislature. Their tenure of property derived from the State for specific public purposes, or obtained for such purpose through means which the State *alone* can authorize—*that is, taxation*—is so far subject to the control of the Legislature, that the property may be applied to other public uses of the municipality than those originally designated. This follows from the nature of such bodies, and the dependent character of their existence."

These decisions are clearly inconsistent with the position that, because the Legislature of Tennessee abrogated the Acts incorporating the city of Memphis, and resumed the power of taxation with which those Acts had invested the municipal officers of that city, that, on account of its debts and the destruction of the power of mandamus, the obligation of its contracts was violated.

The power of taxation, says this Court, in *Providence Bank* v. *Billings*, 4 Peters, 562—

"Is an original principle which has its foundation in society itself. It is granted by all, for the benefit of all. It resides in government as a *part of itself*."

To the same effect as the foregoing are the decisions of this Court in *Rees* v. *City of Watertown*, 19 Wall., 116; *Barkley* v. *Levee Commissioner*, 3 Otto, 265; and in the case of *Mumma* v. *The Potomac R. R. Co.*, 8 Peters, 284, this Court held the law as to *private corporations* to be that—

"The obligation of the contracts of a corporation is not impaired by its dissolution.

"1st. Because its creditors contracted with reference to such a possibility.

"2d. Because their obligation survives, and they may be prosecuted against any property of the corporation which has not passed into the hands of bona fide purchasers."

And it further decides that—

"It is competent for a State to provide for the only practicable and equitable mode of distributing the assets of a dissolved corporation among its creditors analogous to the distribution of the assets of a deceased insolvent debtor."

Surely the law is not more rigid, applied to public, or "*legislative corporations*" (as Chief Justice Marshall calls them, in the case of *Fowle* v. *The Common Council of Alexandria*, 3 Peters, 298), than private or moneyed corporations.

In regard to creditors of the city of Memphis contracting, with reference to the possibility of the repeal of its charter, the very Act of incorporation itself, passed by the Legislature of Tennessee, January 21, 1848, and which was in force when the original bonded debt of the city came into existence, provided, in section 10 of the Act:

"That the General Assembly may, at any time, alter, amend or *repeal* this charter;"

And the same was declared a *public Act.*

In the case of *East Hartford* v. *Hartford Bridge Co.*, 10 How. U. S., 511, this Court went so far as to decide that "a legislative body cannot part with its powers, or delegate them to municipalities, so as to be unable to exercise them on all suitable occasions. Thus, a grant to a town of the right to establish a ferry is, both from the relation of the parties and the subject matter, to be deemed rather a public law than as a contract, and is repealable."

The next question we urge upon the consideration of the Court is, as to whether the Court below has jurisdiction to appoint a receiver, as to the subject matter of the bills under which the appointment was made; and, if it had such jurisdiction, whether the Court could clothe its receiver with the authority and power its order or decree embraces.

The record shows that only *two* of the bills—the original bill of Robert Garrett & Sons, and others, against the city of Memphis, No. 322, and the original bill of Hopkins Loudon against the city of Memphis, No. 323—were filed before the enactment of the laws repealing the charter of the city of Memphis.

Unless those two bills gave jurisdiction to the Court to appoint a receiver, the appointment made was illegal and void. Original and supplemental bills, such as those in the record against a *dead* city, are no more in legal effect than they would be against a *dead* person. If the city is the principal and necessary defendant, it cannot be vitalized after death by making its officers, whose functions and powers had ceased under the law, parties, as these bills attempt to do.

Neither can amended and supplemetal bills supply defects in the averments of original bills, if, before the filing of such amended and supplemental bills, the party against whom the original bills were filed is dead, and cannot controvert such subsequent pleading.

The whole burden of the Garrett & Son and others' original bill, No. 322, is, that complainants are creditors, judgment and otherwise, of the city of Memphis; that, upon some of their judgments, they have had writs of mandamus issued against the city; that these mandamuses have been obeyed by the assessment of taxes, but that the city officers have been derelict in their duty in collecting the taxes assessed; that they only collected from "one-half to three-fifths for a series of years, and left the remainder, or about two-fifths of each annual levy, uncollected; and that each succeeding year the said corporation would not only levy the amount of taxes deemed sufficient for the actual expenses and demands of the current year proper, but assess and levy on all taxable property in said city an amount sufficient to make up the deficit occasioned by non-collection on the levy for the preceding year."

There is no complaint that the city authorities did not levy *enough* taxes—the complaint rather is, that they levied *too much taxes*—but the gravamen of the bill is, that they neglected to

collect the taxes assessed; and they charge "that such neglect constitutes a fraud upon the rights of complainant, against which a Court of Equity will relieve."

Besides such allegations as the foregoing, they claim relief under an Act of the Legislature of Tennessee, entitled "An Act to enable municipal corporations having more than thirty-five thousand inhabitants to settle their indebtedness," passed March 19, 1877, chapter 71, wherein it is provided—

"That upon the application of any person or persons who are the holders and owners of any past due and unpaid bonds, coupons, or other indebtedness of said municipal corporation, not less in amount than one hundred thousand dollars, it shall be the duty of the Chancery Court to appoint a receiver for said municipal corporation," etc.

Wherefore they pray for the appointment of a receiver "to take charge of the assets of said city of Memphis, including its tax books, and bills for all past due and imposed taxes, and that, by order of this Court, he be clothed with all proper powers to enable him to collect the outstanding indebtedness, and claims of every kind due said defendant, and with all powers contained in said Act of the Legislature of Tennessee, passed March 19, 1877, chapter 71; and that he be clothed with all other necessary powers to enable him to collect in the assets, settle the debts of said defendant, and particularly those of complainant."

This bill should clearly have been dismissed on demurrer.

Because the officers of a State fail or neglect to perform their duties in the collection of public revenues, has a Federal Court the power to supersede them, and fulfill those duties itself through its own officer, a receiver? Can a Federal Court perform political duties in helping to govern a portion of a State? The position seems too absurd and preposterous to controvert. Equally untenable is the bill based on the Act of the Legislature of March 19, 1877, chapter 71.

The Legislature cannot act judicially, and the person which the Chancery Court of the State is authorized to appoint receiver is is a mere *State officer* called a receiver.

Neither does the Act empower a *Federal* Court to make the appointment, but its own *State Chancery* Court of the District, where the municipality is located.

Even if it were otherwise, the complainants in the bill do not by their allegations bring themselves within the statute. They who alone apply for a receiver do not allege that they are owners and holders of the amount of debt upon which mandamuses have been issued, which the statute requires for the appointment of a receiver.

There are other provisions of the statute, such as the Chancery Court being authorized to issue bonds, etc., which make it clearly unconstitutional. The first section of the Act absolutely repeals the charter and withdraws all taxing power, the Act to take effect when $850,000 of mandamus taxes are outstanding. Plaintiffs in their bill, filed January 28, 1879, charge that more than $850,000 were then outstanding, though they do not claim to hold that amount, so that if the Act is valid, the charter was already repealed before the filing of the bill, and the suit must fail because brought against a corporation having no existence.

The other bill, *Hopkins Loudon* v. *City of Memphis*, No. 323, should likewise have been dismissed on demurrer, or if otherwise, would not warrant the appointment of a receiver clothed with such power as the order of the Court below clothed its receiver with.

It was draughted, and sworn to so long ago as June 22, 1878, and applied for an injunction against the city, which was refused by Judge Baxter; it then slept in quietude until the 30th of January, 1879, the day before the Act repealing the charter of Memphis was approved by the Governor of Tennessee, when it was *filed* by permission of Judge Brown.

Its material allegations are that the city of Memphis owed complainant a balance of $10,798.71 for paving one side of Main street with stone; that the General Council of the city had, by ordinance, appropriated a portion of the revenues of the city for the year 1876, for public improvements, and that his work was the only public improvement done for the city to

which the appropriation was applicable. Admits that his contract required the work to be done on or before the 15th of December, 1876, under the penalty of $80 per day "for every day's delay beyond the specified time," and admits that he did not complete the work until May, 1877, but states excuses, such as low water in the Ohio river, etc. The contract allowed the city to reserve 20 per centum of the price of the work as a security for the faithful performance by the plaintiff, of the agreement; alleges that the city refused to pay the balance due him, being, perhaps, the 20 per centum reserved; that there were no defects in the work, and if there were, they were waived by its acceptance by the City Engineer, etc.; alleges that a suit at law, was then pending in the law side of the Court, by plaintiff, against the city, for the amount of said balance; prays an injunction against the city "collecting any of the general tax for the year 1876, aforesaid, remaining uncollected, in any medium but the lawful money of the United States, until an amount sufficient to pay the balance due plaintiff, and cost, shall be realized; and commanding the city to set apart and retain such sum, subject to the order of the Court herein, and, on final hearing, such injunction may be made perpetual, and an account and decree," etc. No application was made in the bill for the appointment of a receiver. We think that the refusal of Judge Baxter, to grant an injunction ended, the case, and so thought complainant's solicitors, until the day before the charter of Memphis was repealed.

However that may be, the demurrer to the bill should have been sustained, on the grounds, if no other, that the bill showed it was a controverted claim, and that a suit at law was then pending in the same Court to settle the controversy. Until judgment, the complainant had no status in Court.

Independent of these considerations, there was no application in the bill for a receiver, and no allegations on which a receiver could be appointed.

Now, if these two bills do not justify the appointment of a receiver, then the Court below had no jurisdiction, in case it is held that the Act repealing the Acts of incorporation of the

city of Memphis, were valid. All the subsequent bills lacked the *principal defendant, the city of Memphis*, for which a receiver was appointed.

On February 12, 1879, a receiver was appointed by Judge Baxter, "to take possession and control of the assets and property of the city of Memphis, including real and personal property, and debts due to it, and taxes due and owing to it, except the taxes appearing on the tax books for the year 1878, for which special provision is made in the order, and except the public highways of the city, public squares, public landings and wharves, engine houses," etc., etc., excluded from the operation of the order; ordering the different State officers of revenue—Geo. B. Fleece, County Trustee of Shelby county; Joseph Uhl, Clerk of the Circuit Court of Shelby county—to pay over to the receiver, all the money they have on hand, and, from time, all the money they may collect hereafter, except taxes levied for the support of public schools.

Ordered James C. Neely, former Treasurer of the city, and James W. Moores, former Back-Tax Collector, to pay over to said receiver, all the money they had in possession.

Ordered the receiver to take possession of all the tax books of the city of Memphis, except the tax books for the year 1878, and commanding the person having them in charge, to surrender the same to him at once, etc., etc.

By reference to the order, it will be seen that the Court superseded and put itself in the place of public officers of the State of Tennessee, and took upon itself to administer the revenues of the portion of the State within the boundaries of the city of Memphis, itself, through its receiver; and enacted payment of public revenues which, under the laws of the State, had been payable in scrip, city indebtedness, etc., in United States currency, thus nullifying all the statutes of Tennessee on this subject.

Can a United States Court thus seize the machinery of a State for the collection of its public revenues, and collect and appropriate them through its own officers?

To whom did the property and back taxes of the city of Memphis belong, after the repeal of its charter?

The answer to this iuquiry, is contained in the following extract from the opinion of the Court of Appeals of New York, in the case of *Darlington* v. *Mayor, etc., of New York*, 31 N. Y., 164:

"The corporation of New York, in my opinion, is the trustee of the inhabitants of that city. The property, in a general and substantial, although not a technical, sense, is held in trust for them. They are the people of the State, inhabiting that particular subdivision of its territory—a fluctuating class constantly passing out of the scope of the trust, by removal and death, and as constantly renewed by fresh accretions of population. It was granted for their use, and is held for their benefit. The powers of local government committed to the corporation are precisely of the same character. Its property is subject to the law-making power of the State, *vested in the Legislature.*"

In case the city of Memphis owned property, or uncollected revenue, or money which had not been appropriated to public purposes, or to those purposes to which they properly belonged, the State of Tennessee, as trustee, can, and may properly be expected to appropriate the same to the debts of the city.

It has so expressed itself in the Act of its Legislature, passed January 29, 1879, chapter 11, establishing taxing districts, and which Act was simultaneous with the repeal of the charter of the city. It provides—

"That all indebtedness for taxes or otherwise, whether in litigation or otherwise, dues to the municipalities whose charters were repealed, shall vest in and become the property of the State, to be disposed of for the settlement of the debts of said municipalities, as shall hereafter be provided by law."

The legal presumption is in favor of an honest and bona fide intention on the part of the State to execute any purpose it expresses. *Fletcher* v. *Peck*, 6 Cranch, 87; *The Sunberry and Erie R. R. Co.* v. *Cooper*, 33 Penn. stat., 282. There then was no want of a trustee for the assets and back-taxes of the city of Memphis, when the Court below appointed its receiver.

In pursuance of the foregoing Act of the Legislature,

passed January 29, 1879, chap. 11, sec. 14, it enacted the law of March 13, 1879, chap. 92, providing for the appointment by the Governor of the State, "a receiver and back-tax collector." Under this law, appellant, Minor Meriwether, was appointed Receiver and Back-Tax collector.

That statute provides that "the Governor of the State shall appoint an officer for such extinct corporations respectively, to be known as a receiver and back-tax collector, who shall take the oath required of other collectors of public revenue, and shall give bond with good sureties," etc.

Section 2 of the Act provides—

"That such receiver and back-tax collector shall make to the Chancery Court every three months, a full and complete statement, showing all taxes collected and settled, and all in his hands that remain to be collected and settled. He shall at the end of each month, pay into the treasury of the State, the whole sum by him collected, less his compensation. He shall distinguish in making such payments, the respective sources from which the moneys paid in are derived, showing what is collected from taxes for general purposes, and what for taxes for special purposes, designating the particular special purpose, so that the same may be kept separate in the State treasury, in order that the treasurer may pay the same according to any lien, priority or equity, if any, which may be declared by the Chancery Court touching any of said funds, in favor of any creditor or class of creditors."

Section 4 provides for his filing in the Chancery Court, a general creditors' bill, in the name of *the State*, in behalf of all creditors against all the delinquent tax-payers of the extinct corporation; and all pending suits to be revived in the name of the State, and consolidated with the general suit, and the Court in which the general suit is pending, to settle and adjust all equities, priorities and liens, and to give all relief, both to the defendants and the creditors, that might be given were separate suits instituted; the Court to have power to enforce all liens upon property for the payment of such taxes, etc. The Chancery Court in the exercise of the "jurisdiction conferred by the Act, to have all the powers possessed by such Courts in the

administration of the estates of insolvent natural or corporate persons."

And section 5 of the Act provides that, for taxes prior to 1875, such indebtedness of the extinct municipality shall be taken in payment, as provided for by *an Act of the Legislature, passed March* 20, 1875, chap. 92, sec. 66. And in addition to said Act of 1875, "compromise or funded bonds, shall be taken at their face value; all other bonds, scrip, certificates of indebtedness, past due coupons, ledger balances, etc., at fifty cents on the dollar, and all judgments at fifty cents on the dollar," etc. And further—

"It shall be the duty of such Receiver and Back-Tax Collector to receive in payment of taxes imposed after 1874, any of the aforesaid valid indebtedness of the extinct municipality, when there is no lien or equity requiring the same to be paid in current money. And whenever any question may be raised as to the right of the tax-payer to pay taxes imposed after 1874, in the said indebtedness of the extinct municipality, the Court shall determine the same, on motion, at the instance of the parties interested."

Section 6 of the Act provides that the Receiver and Back-Tax Collector shall not coerce payment of a greater sum than one-fifth part annually; providing, "however, that nothing herein contained, is intended to interfere with any vested right which entitles the party having such right to a speedier collection."

Section 7 provides "that the funds collected under this Act shall be paid out by the treasurer of the State, from time to time, to those entitled, in such manner as the Chancery Court may adjudge and decree, on the warrant of the receiver, countersigned by the Chancellor."

Such is the abstract of the statute under which Meriwether qualified as Receiver and Back-Tax Collector. He had entered upon the duties of his office, filing a general creditors' bill according to the statute, in the Chancery Court of Shelby county, when he was enjoined by the decree of the Court below, and prevented from proceeding further in the discharge of his duties.

Can it be said that this statute impairs the obligation of contracts? Instead of destroying, they provide for debts, a fund which otherwise could not have been appropriated to them. By the laws previous to this legislation, very few of these back taxes were appropriated to the debts of the city. Within the limit of $1.60 to the $100 of property valuation for municipal taxation—

$1, or one per cent., was appropriated to general expenses, such as Police and Fire Departments and salaries; 20 cents to interest on bonded debt; 25 cents to sinking fund, 10 cents to city schools, and 5 cents to payment of judgments. See Act of March 23, 1875, chapter 92, section 63, p. 159.

The Act of the Legislature allows them all, prior to 1875, to be paid in the public indebtedness of the city, at the rates provided for in the Act of the Legislature, passed March 20, 1875, chapter 92, merely adding compromise bonds, etc., at the rate of 50 cents to the dollar, to the other class of indebtedness.

The creditor is not compelled to scale debts, he holds, against the city, or to consent that they may be used in the payment of taxes—he is only *allowed* to do so.

It is a privilege granted him, which he did not enjoy before, to the same extent.

Surely the Legislature, as to back taxes, and *especially* those on which the general creditor had no claim, can, in making them liable to those debts, attach such conditions to the liability as it deems proper.

And so it was decided by this Court, in the case of *Commissioner, etc.*, v. *Lucas, Treasurer*, 3 Otto, 108, cited heretofore.

As to those creditors who had vested rights or liens, the statute itself, protects them.

The laws complained of do not discharge any of the debts, but merely regulate the remedy to enforce the obligation, and make such pro rata distribution of the assets of the corporation as its insolvent condition demands; preserving all rights, liens and priorities which subsisted against the taxes, referring their ascertainment to a judicial tribunal especially suited to the purpose.

Without this legislation, it is doubtful whether the creditor could legally have subjected these tax arrearages, to his debts. They were taxes due the State of Tennessee, through municipal officers; they were levied for *public* purposes, and surely the abrogation of the charter of the municipality could not transmute the *public*, into *private* purposes. They did not have the character of debts due a corporation—they were exactions from the citizen to the State for the purpose of government.

How a public exaction, in the shape of taxes, made by the State as a political power, through its agents, the municipal officers of Memphis, can be converted into private property of the corporation, is more than our mental ingenuity can work out. The taxes are due the State all the time, and are for public purposes all the time. Where they have, by the judicial writ of mandamus or otherwise, been specifically appropriated to any debt, that appropriation is specially guarded by the statute in question, giving the Chancery Court power "to settle and adjust all equities, priorities and liens."

If the tax-payer should insist that he cannot be called upon to scale the debts of the city which he holds, in the payment of his taxes, we can say that his taxes are stamped with a public character, and are under the control of the Legislature. They are not debts which he owes the municipality, but his share of the public burthen, which he pays for the protection afforded his property and himself by the government. The Legislature in allowing these public dues to be paid in corporation indebtedness, grants a right which did not exist under general law, and can attach such conditions to the enjoyment of the right, which it deems proper.

But even if it were otherwise, and the taxes due the corporation should be construed into debts, it is a well settled principle that although the debtor of an insolvent corporation may set off any valid indebtedness of the corporation, which he held at the date of its insolvency, against what he owes the corporation, he cannot go into the market and buy up the insolvent's indebtedness and make a legal offset of it.

If this Court thinks that the Court below had jurisdiction to

appoint a receiver under the bills filed, we insist that it could not confer the *power* on its receiver which its order or decree attempts to, and that after the appointment and qualification of the State Receiver and Back-Tax Collector, his power and authority as to the subject matter confided by the statute of March 13, 1879, should have been recalled by the Court below.

If the State of Tennessee was the trustee of the property and tax arrearages of the city of Memphis, what authority had the Court below to interfere with the trust, and take the subject matter of the trust into its own possession?

"A receiver is appointed either to prevent fraud, save the subject of litigation from material injury, or rescue it from inevitable destruction."

Williamson v. Wilson, 1 Bland Ch. R., 420.
Skip v. Harwood, 3 Atk., 564.

None of these conditions existed when this receiver was appointed. The State had legal title to the assets and taxes, and they were then in the possession of the officers appointed by law, for their custody, and were responsible for their safety on their official bonds.

At the time of this appointment of receiver, the following Acts of the Legislature of Tennessee, in regard to back-taxes due municipalities, were in force:

Act of 1873, ch. 112, providing that the commissioner appointed in each county of the State by Act of December 6, 1871, be empowered and authorized, with the consent of the City Council, Mayor, &c., to collect all unpaid taxes due said municipality, in accordance with the provisions of the Act.

See Thompson & Steger's Addenda to Statutes, p. 105, § 1383*a*.

The Act of 1872, Extra Session, chap. 3, amendatory of the Act of December 6, 1871, provides for the collection of all unpaid taxes due the State and counties, where lands have been sold for taxes due since 1865, inclusive, and bought in by the Collector, in the name of the Treasurer, as Superintendent of Public Instruction, and not redeemed, together with the amount of taxes due thereon. It was the Act of 1871, as thus amended,

which was made applicable to the unpaid taxes of municipal corporations.

Then the Act of March 24, 1875, chap. 103, was passed, providing "that, where there is any revenue due the State, county, or any municipality, assessed on property or polls for any purpose, uncollected and unaccounted for, it shall be the duty of the Quarterly Court of such county and such municipality, respectively, as the case may be, to elect a back-tax collector, whose duty it shall be to collect all taxes levied on property or polls uncollected and unaccounted for, and account for the same, as other collectors of revenue," etc.

By chapter 91, of the Acts of the Legislature of Tennessee, approved March 24, 1875, the office of City Tax Collector is abolished, and the County Trustee empowered to collect all taxes thereafter due and payable. See Acts of Tennessee, p. 129, of 1875.

Likewise, by section 70, of chapter 92, of an Act of the Legislature, approved March 23, 1875, provision was made for the collection of city taxes by the collector of State and county revenue. See acts of 1875, p. 162. These laws are cited and referred to in one of the bills of complainants below. See supplemental bill of Hopkins Loudon, p. 34.

"The city of Memphis, by its General Council, passed an ordinance, by which all the remedies provided by the laws of the State for the collection of State revenue were adopted and put in force as to all revenue then due, or thereafter to become due, to said city."

The foregoing is an allegation of the supplemental bill last filed against Meriwether, the State Receiver and Back-Tax Collector, and others. See Record, p. 87.

Here, then, were Acts of the Legislature of Tennessee, in full force, with State officers acting under them, with power and authority to collect all the back taxes of the city of Memphis, at the very time the receiver was appointed by the Court below. Must these State officers of revenue give way to the Federal Court receiver, as to duties enjoined by law, and for which they are responsible to the State, and they being clothed with

all the power and authority the law-making power of the State could clothe them with?

It is a novel principle, and directly opposed to those decisions of this Court, which recognize the sovereign power of the State over the revenues it assesses against its citizens, and disclaim the jurisdiction of Federal Courts to assess or collect such revenues; to allow a Federal Court of inferior jurisdiction to displace State officers of revenue in the actual performance of their duties, as in this case.

What law governs Federal Courts, except the Federal and State statute, and the common law where the subject matter of the litigation arose?

Even if the State of Tennessee had not already had revenue officers, with full power to collect the back taxes of the city of Memphis, and the Federal Court, in the absence of such officers, had the jurisdiction to take hold of property and taxes vested, by the Act of its Legislature at the time in the State, as trustee, and, under such circumstances, appointed a receiver for the purpose of collecting such back taxes, the appointment would legally cease as soon as the subsequent act of the Legislature of the 13th of March, 1879, chapter 92, was passed, and a receiver and back-tax collector qualified under the same.

The jurisdiction of the Federal Court cannot be invoked on the grounds that there was no trustee, or proper custodians of the funds, etc. After the abrogation of the charter, the State itself was the *express* trustee, made so by a statute cotemporaneous with the abrogation, and the county of Shelby Trustee, and county of Shelby Commissioner, and Clerk of Circuit Court, and even City Treasurer, bound by his bond, were legal and safe custodians of the funds.

How can this receiver, appointed by the Court below, take possession of and collect the back taxes of the city of Memphis? Does the possession of the tax books answer his purpose? What are they but mere sheets of paper, written upon and copied from original assessment books, deposited by law in the office of the Clerk of the County Court of Shelby county? Have those tax books talismanic virtue, which will enable them

to collect taxes themselves? Does this sort of possession of the Court receiver take away the power and dispense with the duties of an officer of the State, especially authorized and required by law to collect these same taxes?

The record shows that only three tax debtors of the city of Memphis—Joseph R. Williams, J. B. Hill and Wm. F. Hardin—out of thousands, are made parties to any of these bills, and they were made parties to a supplemental bill, filed the last one of all, and months after the repeal of the charter, and the appointment of receiver.

Unless the tax debtors are parties, how can the receiver be in possession of their liabilities, or how can he prosecute the same?

Even if they were made parties, it would have to be under garnishment proceeding, which is not legal as to public revenues, under the decisions of Tennessee Courts.

See Moore & Marsh v. Mayor and Aldemen of Chattanooga, 8 Heisk. R. (Tenn.), 850; Bank of Tennessee v. Dibbrell, 3 Sneed, 379.

By what law will the Court receiver collect these back taxes? If by the statute laws of Tennessee, he will find it to be very difficult, if not impracticable.

The laws of Tennessee, in the enforcement of the collection of taxes, require many things to be done, which the receiver of a court cannot do.

Under the statute of Tennessee, approved March 25, 1873, Acts of 1873, p. 154, the back taxes of the city of Memphis are to be collected in the same mode, at the same time, and by the same officer as the State and county taxes, where they are collected by sale of the property taxed. How can a Court receiver get at these municipal taxes through the property sold, or through its redemption, when the taxes due the city, county and State are mingled together?

Under the statutes of the State, a great deal of the property subject to city taxes is in the hands of the Commissioner of Shelby county, who is receiving its annual rents, and appropriating them to the taxes in arrears. How can the receiver

get control of this commissioner, or the property or funds in his hands?

Much of the property has already been sold for back taxes, and the title is vested in the Treasurer of the State, as Superintendent of Public Instruction, and is subject to redemption, but, by law, the redemption must be made through this one officer of the State, who issues a certificate of redemption to the person redeeming. How can this law be conformed to by the receiver?

The law creates a lien on property subject to taxes, but the lien is in favor of the State of Tennessee, and corporation creditors cannot be subrogated to the lien. This Court says, in 3 Otto, 265:

"Liens for taxes are very generally created throughout the country, but it is never supposed that the public creditors, to whom the money raised by the tax is to be paid, have the benefit of such lien. It is created for the benefit of the public authorities, to enable them with greater certainty and facility to collect the taxes without the embarrassment by other pretended claims against the property taxed."

Cooley on Taxation, p. 530, says:

"A general right exists in the State to refund any tax collected for its purposes, and a corresponding right probably exists in the Common Council, or other proper boards of cities, towns, villages, etc., to refund to individuals any sums paid by them as corporate taxes, which are found to have been wrongfully exacted, or are believed to be, for any reason, inequitable."

The statute of the 13th March, 1879, chap. 92, authorizing the appointment of Receiver and Back-Tax Collector, provides for this in the matter of over-valuation in assessments of property by allowing the Chancery Court to correct such assessment. How can the Federal Court or its receiver do this, not recognizing the validity of the statute?

Another power granted by the statutes of Tennessee, to collectors of taxes, is to make assessments for back-taxes when they have been omitted.

This Court, in the cases cited, say that this cannot be done by a Federal Court, and is outside of its jurisdiction.

In suits instituted for the collection of taxes, the *State* of *Tennessee* is, by law, a necessary party. How can a Federal Court receiver use the name of the State of Tennessee in the suits he has to institute?

Section 65 of the Acts of Tennessee, approved March 23, 1875, chap. 92, provides that for taxes in arrears, prior to 1875, certain indebtedness of the city of Memphis shall be taken in payment at certain rates. The order of the Court below requires its receiver to collect all back-taxes of the city in United States currency.

These instances all show that the Court receiver cannot conform to the laws of Tennessee in the collection of the taxes due the city of Memphis, and that he will have to collect them *outside* of the law, if he collects them at all.

Says this Court, in *Rees* v. *City of Watertown*, 19 Wall., 120:

"There are cases indeed, in which a Court of equity gives remedy, where the law gives none, but where a particular remedy is given by law, and that remedy bounded and circumscribed by particular rules, it would be very improper for this Court to take it up where the law leaves it, and extend it further than the law allows."

Even if a portion of these legislative enactments of the State of Tennessee, should be held unconstitutional, the other parts may be sustained.

This Court, in *Packet Company* v. *Keokuk*, 5 Otto, 80, decided that—

"Statutes which are constitutional in part only, will be upheld and enforced, so far as they are not in conflict with the Constitution; *Provided* the allowed and prohibited parts are severable."

Many clauses of these statutes may be struck out and others carried into effect.

C. F. VANCE,

M. MERIWETHER,

Solicitors for Appellant, Minor Meriwether.

IN THE

Supreme Court of the United States

MINOR MERIWETHER, RECEIVER, &C., AND OTHERS, *Appellants*,

—VS.—

ROBERT GARRETT & SONS, AND OTHERS, *Appellees.*

No. 916

Appeal from Circuit Court of the United States for the Western District of Tennessee.

IN EQUITY.

STATEMENT OF CASE AND BRIEF

FOR APPELLANTS.

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STATEMENT OF THE CASE.

On the 29th of January, 1879, the complainants, Robert Garett & Sons, filed their bill, in the Circuit Court of the United States, sitting in equity, at Memphis, against the City of Memphis, alleging that said city owed them over one hundred thousand dollars, upon most of which they had judgments and writs of mandamus, and that writs of manda-

mus existed against the city, for over eight hundred and fifty thousand dollars. That the officials, by a vicious system of enforcing the taxes, collected only about three-fifths of the taxes imposed. That this practice had run through a series of years, resulting in delinquent taxes to about two-and-a-half millions of dollars. That the city is insolvent. That the tax imposed for their debt was a trust fund, which could be applied to no other use. That the city was trustee for the same, and had been requested to press collection, but neglected to do so, which was a fraud on complainants, relievable in a Court of Equity.

That the Legislature of Tennessee, on the 19th of March, 1877, passed an Act, authorizing the Chancery Court to appoint a receiver to take charge of the affairs of the city, upon application of creditors, owning demands against the city, exceeding one hundred thousand dollars, and upon its being made to appear that there were outstanding writs of mandamus, to enforce debts against the city, exceeding eight hundred and fifty thousand dollars. That being without remedy at law, they asked a receiver to take charge of the assets of the city, and to collect the taxes levied for the purpose of paying their judgments, both upon the general principles of equity jurisprudence, and by authority, of said Act of March 19th, 1877.

See Record, pp. 2, 3, 4.

The city Charter was repealed on the 31st of January, 1879.

The other bills were filed after the repeal, by creditors of the city, who claimed the right to subject to their debts, all property held by it for public purposes, as well as all taxes, which had been imposed for it, whether for the specific use of paying debts, or for other public use. They alleged that the city officials had resigned and abandoned the public property, and neglected their duties, in regard to the collection of the taxes, and that the same were exposed to loss by such conduct.

That the city had not only power to contract the debts due

them, but power to levy taxes for their payment, which they had repeatedly exercised, for their benefit, and that considerable part, of the uncollected taxes, were imposed for their use. That all the taxable property, in the local territory, was a trust fund for payment of their debts, and that they had a lien on the same, which a Court of Equity would enforce in their behalf against such property, and its owners. A receiver was asked to take charge of the city property, and to seize and collect the delinquent, and other taxes.

The bills, of Robert Garrett & Sons, and Farman, Rogers, and others, were prayed to be taken as general creditors' bills, to wind up the affairs of the city.

See Record, pp. 21, 76, 77.

Taxes, by way of new levies, or assessments, were asked against the taxable property, if required to pay their debts in full; and, to that end, if necessary, that the tax payers be made parties.

See Record, pp. 75 to 89.

T. J. Latham was appointed receiver, February 14, 1879.

See Record, p. 63.

On the 13th of March, 1879, the Legislature passed an Act providing for the collection of said taxes, and their application to the debts of the city government. Under this Act, defendant, Minor Merriwether, was appointed tax collector by the Governor, and was duly qualified. He was made defendant by supplemental and amended bill, which sought to have him restrained from the performance of his duties, under said act of March 13th, 1879.

See Record, p. 75 to 89.

John B. Hill and others, tax payers, within the local territory, were made defendants, and decrees were asked against them and their property, for such taxes as they owed the late city government, and new levies, if necessary, upon their property.

See Record, pp. 75 to 89.

The officials of the dissolved corporation were made parties.

See Record, p. 45.

The defendants interposed demurrers to the relief sought.

See Record. pp. 99, 102, 104.

The Judges, sitting, certified a division of opinion, on the questions raised by the Record.

See Record, p. 106.

THE QUESTIONS CERTIFIED

are as follows:

1st. Whether, inasmuch, as the first of the original bills filed in these consolidated causes, was filed in this Court prior to the 29th of Junuary, 1879, the date of the Act of the General Assembly of the State of Tennessee, repealing the Charter of the city of Memphis, this Court had, or has any jurisdiction to seize and impound the assets, revenues and properties of the corporation, in being, described in complainants' bill, and to place those assets, revenues and properties, in the hands of a receiver, appointed by the Court to collect, administer and disburse the same in the payment of creditors of such corporation.

2d. Whether the Act of the General Assembly of the State of Tennessee, entitled an Act to repeal the charters of certain municipal corporations, and to remand the territory and inhabitants thereof to the government of the State, passed January 29th, 1879, and which Act, in terms as shown therein, repealed the Charter, and all laws incorporating the city of Memphis, was, and is a valid law, or whether the said Act is contrary to the Constitution of the State of Tennessee, or to the Constitution of the United States, as against creditors holding bonds and debts contracted prior to the repeal.

3d. Whether the Court has jurisdiction to seize and impound and administer the assets, properties and revenues of

said Municipal Corporation, when it appears, as it does by the pleadings in this cause, that the Mayor and other officers of said Municipal Corporation had abandoned their offices, and their duties; and when it also appeared, as it does by the pleadings in this cause, that the General Assembly of the State has passed a series of these acts; one repealing the charter of Memphis; the second creating a Taxing District in the same territory and providing a government therefor; and the third to collect and dispose of the taxes assessed for Municipal Corporations in this State, &c., being ch. 10, 11 and 32 of the acts of 1879.

4th. Whether, if the act of the General Assembly repealing the charter of the city of Memphis be valid, the effect thereof was to extinguish all claims, debts, dues and demands to and from said municipal corporation, including the claims of the various complainants in these causes.

5th. Whether, if said act repealing the charter be declared valid, and that the effect thereof was not to extinguish all claims, debts, dues, demands to and from said Municipal Corporation, has this Court jurisdiction to collect the taxes which had been lawfully assessed by said Municipal Corporation and due before the repeal of its charter, but which have not been collected.

6th. Whether, if this Court has jurisdiction to collect back or delinquent taxes, it can do so by directing its Receiver to sue the delinquent taxpayers; and if so, in what Court, State or Federal, must such suits be brought; or can the Court, by proceedings in the nature of garnishment, require the delinquent taxpayers to come before the Court and pronounce judgment against each for the amount found to be due.

7th. Whether this Court has jurisdiction to enforce the lien on real estate for taxes which the said Municipal Corporation possessed, by proceedings in these causes, or otherwise.

8th. Whether upon the entire record the Court has jurisdiction to entertain the bills, and grant any relief to complainants.

9th. Whether after the taxes already levied and uncollected, due said corporation, and the other property named, in these bills, shall have been ascertained to be insufficient to pay all the creditors of said city, that then this Court has power to bring in all, or any of the inhabitants, and corporations, within the limits of said dissolved corporation, by process, and make assessments against them, or their property, to pay the balance of entire debt found owing from said corporation, pro rata, and render judgments and decrees against each of them for the pro rata share or amount found due from said dissolved corporation, and enforce liens against specific property against which taxes shall have been levied.

10th. Whether where the charter of a municipal corporation has been repealed, the creditors of such municipal corporation have a right to any relief, except such as the State, through and by its legislative enactments, may afford to such creditors.

11th. Whether the 4th section of the act of the Legislature of Tennessee, approved January 31, 1877, chapter 10, Acts of 1879, repealing the charter of the city of Memphis, and the 14th section of the act of the Legislature of Tennessee, approved on the 31st of January, 1879, being chapter 11 of the Acts of said State for 1879, and act of the Legislature of the State of Tennessee, approved March 13, 1879, being chap. 92 of the acts of said Legislature of 1879, and particularly sections 4, 5, 6, 7, and sections 11 and 13 of said act, as far as complainants are concerned, and those creditors who have made themselves parties, and the receiver of this Court, who was appointed before said act was passed, are in violation of the Constitution of the United States and the State of Tennessee, and void.

ASSIGNMENTS OF ERROR.

1. The Court erred in not dismissing the bill of Garrett & Sons, which was filed before the repeal of the city charter.

2. In not dismissing the bills, which were filed after the repeal of the city charter, for the purpose of subjecting to the

creditors of the corporation, the taxes levied for the city government, and the property held by it, in trust for the public.

3. In not holding the act repealing the city charter valid.

4. In holding that it had power to make assessments against the citizen, and his property, in the local territory, and to collect the same, by direct decree, for the benefit of the corporate creditors.

5. In holding that it had power, by a receiver, to seize the revenues of the dissolved corporation, and the property used by it, for purposes of government, for the benefit of the corporate creditors, and to collect such revenues, and, sell such property, for the corporate creditors.

6. In not holding that the complainants were entitled to no relief, except as to the private property of the dissolved corporation, which it held subject to no public use, or trust.

7. In not holding that, as far as complainants sought the aid of the Court to lay taxes for them, or to collect taxes already laid, through its marshal, or receiver, that the powers invoked, were legislative, and could not be exercised by the Court.

8. In not holding that the Court had no power to enforce collection, of the delinquent and other taxes, imposed for the city government, and uncollected, at its dissolution, by means of the liens and remedies provided by the Legislature of the State for the local government, and, that the Court possessed no remedy, in virtue of its general powers, whereby the same could be done.

9. In not holding that the act of the Tennessee Legislature, passed March 13, 1879, being ch. 92, providing for the collection of the taxes, unpaid, at the dissolution of said corporation, and their application, to the creditors of the corporation, was a valid act, and, that it had no power to interfere with the State, in proceeding to collect said taxes, under said act.

ARGUMENT.

I.

The bill filed before the repeal of the charter.

It is certainly clear, that the bill filed before the repeal of the city Charter, cannot be maintained. A Court of Equity has no power to seize the revenues and other property of an existing municipal corporation, which it holds for purposes of government, and apply the same, in satisfaction of the debts of such corporation.

2 Dillon on Mun. Corp., sec. 512, and note 3;
United States vs. Railroad, 17 Wall., 328, 329;
Darlington vs. Mayor, &c., 31 N. Y., 164, 193;
Chicago vs. Halsy, 25 Ill., 575;
Erie vs. Knapp, 29 Penn. St., 175;
McDougal vs. Supervisors, 4 Minn., 184;
Bernham vs. Fond du Lac, 15 Wise, 193;
Truebel vs. Colburn, 64 Ill., 376.

This bill is not aided by the Act of the Tennessee Legislature, passed on the 19th day of March, 1877, copy of which is furnished herewith.

1. That Act has reference alone to the State Court of Chancery, at Memphis, and is, therefore, no authority for jurisdiction, in any other court.

Whiton vs. Chicago, &c., 25, Wis. 424;
Baltimore, &c., R. Co., vs. Wrightmans, Administrator, 29 Gratt., 439. 3 N. J. 9. 13. 14. 14 Iowa 296.

2. It undertakes to confer legislative powers on a Chancery Court. This is forbidden by the State Constitution. These powers properly belong to a different arm of the government.

Constitution of Tenn., Art., 2, sec. 2;
State vs Armstrong, 3 Sneed, 634;
Cooley on Taxation, p. 33, 34;
Hardenburg vs. Kidd, 10 Cal., 402.

Courts of Equity have no inherent jurisdiction, nor can jurisdiction be conferred on them by statute, to carry on the affairs of a municipal corporation.

II.

As to the validity of the act repealing the city charter.

The highest Court of the State, in an able opinion, fortified by a great array of authority, has decided that the Act of January 29th, 1879, which in terms, repeals the Charter of the city of Memphis, was passed in accordance with the State Constitution, and is a valid enactment.

See Memphis Taxing District vs. Briggs, 2 Lea, p. 425

This Court will not review the opinion of the State Court on such a question, but treat it as conclusive.

R. R. Company vs. Georgia, 98 U. S. R., p. 359;
7 Wall., 253; 9 Wall., 35.

Over municipal corporations, the Legislature, as the trustee, or guardian of the public interest, has the exclusive and unrestrained control, and acting as such, as it may create, so it may modify or destroy, as public exigency requires or recommends, or the public interests will be best subserved.

Angel & Ames on Corp. (10th Ed.) Sec. 31;
2 Kent (~~4th Ed.) p. 274;~~ (12 Ed.) p. 305;
11 Hum. R., 582, 583; 4 Wheaton R., 630, 631;
5 Heisk. R., 528; 92 U. S. R., 307.

In the language of Mr. Justice Hunt, in the United States vs. Railroad Company, 17 Wall, R. P. 329: "The State may withdraw these local powers of government at pleasure, and may, through its Legislature, or other appointed channels, govern the local territory, as it governs the State at large. It may enlarge or contract its powers, or destroy its existence."

"Such institutions are auxiliaries of government, in the important business of municipal rule, and cannot have the

least pretension to sustain their privileges, or their existence, upon anything like a contract, between them and the Legislature, and because their objects and duties are incompatible with everything in the nature of compact."

Angel & Ames on Corp., 10th Ed., sec. 31;
McKim vs. Odom, 3 Bland, ch. pp. 417;
4 Wheaton, p. 630, 631.

The fact that these corporations have power to contract debts, and in the exercise of that power have done so, does not change their nature, or abridge the legislative control over them.

All persons dealing with such corporations do so with full knowledge of plenary power, in the Legislature, to destroy them at will.

Every creditor is conclusively presumed to contract with a view to this contingency. It is as much a part of the contract as if written in its face. It is a hazard which the creditor takes in dealing with these corporations.

The dissolution of a municipal, or even of a private corporation, by legislation, or judicial sentence, in the exercise of the rightful powers of government, no more impairs the obligation of contracts than the execution of a natural person, in pursuance of judicial sentence, impairs the obligation of his contracts. In either case the obligation of the contract survives, and creditors may enforce the same against the property and effects of the deceased natural person, or the defunct corporation. Every creditor, whether of a natural or artificial person, must be understood as contracting in view of these possible contingencies.

Mumma vs. Potomac Company, 8 Peters, U. S. R. p. 284;
~~10 Wis. 498;~~
~~30 New Hamp., 435;~~

In the language of Chief Justice Marshall. "If the act of incorporation be a grant of political powers, if it create a civil institution to be employed in the administration of the

government * * * * the subject is one in which the Legislature may act in accordance with its own judgment, unrestrained by any limitation of its power imposed by the Constitution of the United States."

Dartmouth College vs. Woodward, 4 Wheaton, 631; See also Cooley Con. Lim., pp. 192, 193, and Notes 1 and 2.

The existence of corporate creditors cannot operate to restrain the exercise of this necessary power of government. To hold that it does would be a virtual destruction of the power.

Suppose that in the charter of a private corporation power was reserved to the Legislature to repeal, alter or modify the charter, in its discretion, would the fact that the corporation, in the legitimate exercise of its corporate powers and franchises, created debts, destroy or in any way impair the right of the Legislature to repeal its charter? Clearly not. The power of the Legislature over the charter would be as complete as if the debts had not been created; and upon its repeal, if the corporate assets were insufficient to pay the corporate debts, in full, the creditors would be without remedy for the balance due them. Now, from the very nature of public corporations, the Legislature has the same right to repeal their charters as it would have to repeal the charter of a private corporation, when the power to repeal is expressly reserved in the charter. In each case creditors necessarily contract with reference to the power, and if upon its exercise, the assets of the corporation are applied to their debts, they have obtained all they have a right to demand under their contracts.

It is urged, in argument, that Section 8, of Article 11, of the Constitution of 1870, saves the rights of the corporate creditors, and makes the repealing act inoperative so far as they are concerned. This constitutional provision is in these words: "No corporation shall be created, or its powers increased or diminished by special laws, but the General Assembly shall provide by general laws for the organization of

all corporations created, which laws may at any time be altered or repealed, and no such alteration or repeal shall interfere with or divest rights which have become vested."

This provision does not have reference to the repeal of charters of incorporation, but to the alteration or repeal of general laws, under which corporations may have been organized. It has no reference to the rights of creditors of corporations, but was designed to save the franchises of corporations from disturbance or impairment, by repeal of the general laws, under which they were brought into being.

The framers of the Constitution foresaw that the public welfare might require a change of any general law enacted for the organization of corporations, and took care to provide that if such change occurred, it should not affect the "vested rights" of corporations organized under the system which was superseded by such change. Already one general law on this subject has given place to another. Soon after the adoption of the Constitution of 1870, by general law, Chancery Courts were authorized to grant charters of incorporation. This law remained in force until 1875, and many charters were granted under it. Its repeal in 1875, and the substitution of a different system, leaves all corporations organized under it, in as full enjoyment of their "vested rights," as if it remained in force, and unrepealed, as the constitutional provision on the subject declares that "no such alteration or repeal shall interfere with or divest rights which have become vested."

This constitutional provision obviously has no reference to the grant of political powers to a municipal corporation. It is clothed with no "vested rights." Its existence involves no element of contract upon the part of the State. Its objects and duties are incompatible with everything in the nature of a contract, or of "vested rights."

Angel & Ames on Corp., sec. 31;
Burroughs on Taxation, 22, 23; 51 Ill., 17;
5 Hum., 288, 289; 5 Heisk., 527; 3 Head, 317;
3 Bland, ch. 417; 46 N. Y., 405. 401;
45 Ma. 141.

The argument based on this provision of the Constitution of the State proceeds upon a misconception of the purposes for which it was designed.

In every point of view, and for all purposes, the repealing act is valid.

III.

Questions 3, 5, 6, 7.

1. *Liability of taxes and public property for corporate debts, upon the assumption that they are assets or effects of the dissolved corporation, which corporate creditors may subject.*

It is said, in the opinion, in Broughton vs. Pensacola, 93 U. S. R. pp. 268, 269, that the modern doctrine applicable to a dissolved private corporation, was that a Court of Equity would seize and administer the property and effects of such corporation, for the benefit of its creditors; and, that, "if a municipal corporation, upon the surrender, or extinction in other ways, of its charter, is possessed of any property, a Court of Equity will equally take possession of it, for the benefit of creditors."

I shall accept this as sound law, in considering the questions raised, by the third, fifth, sixth and seventh propositions in the certificate of division.

What is the property of a dissolved municipal corporation, which a Court of Equity will administer for creditors?

1. It is not the public buildings, hospitals, streets, water works, fire engines, and the like. These belong to the public, and not to its corporate agent, the municipal corporation. As to all such property, the corporation is a mere trustee; and, the trust property cannot be subjected to its debts.

2 Dillon, Mun. Corp., sec. 446;
Halliday vs. Frisbee, 15 *Calif. R., 630;*
Davenport vs. Insurance Company, 17 Iowa, R. 276;
Louisville vs. Commonwealth, 1 Duval, 275;
~~*New Orleans vs. Insurance Company, 23 La. An., 126;*~~
Schaffer vs. Cadwallader, 36 Pa. St., 126;
President, &c., vs. Indianapolis, 12 Ind., R. 620;
~~*Lamb vs. Shays, 14 Iowa, R. 270;*~~
~~*Cole vs. Green, 25 Ill.*, 104; *Green vs. Marks, 24 Ill.*, 221~~

The dissolution of the corporation cannot change the nature of property thus held, in trust, and make that which was not subject to the corporate debts before dissolution, liable for the same, after that event.

2. Taxes imposed for purposes of government are not property of the corporation, which its creditors may seize, and have applied to the satisfaction of the debts of the corporation.

1 *Dillon, Mun. Corp., sec.* 64, 65;
1 *Baxter's Legal Reporter, pp.* 290, 291.

These taxes are as much public property, as the uses for which they were imposed; as, for example, the tax for schools, for fire or police service, for streets, for hospitals, and the like. The dissolution of the corporation works no change in their real nature. That fact does not convert them into corporate property or effects, which a Court of Equity can, or will administer, in behalf of creditors, in analogy to the doctrines of that Court, touching the property of dissolved private corporations.

Nor is there anything in the fact that the officers of the corporation have resigned their offices, and abandoned control over these properties and taxes, which confers jurisdiction on a Court of Equity to interpose for creditors, and appoint a receiver for such properties, and a collector, to collect the taxes, in the interest of creditors.

So far from the repeal of the charter of the city having the effect to make these taxes the private property of the dissolved corporation, and liable for its debts, the effect would be to put an end to the taxes, without something in the repealing act showing a contrary intent.

Cooley on Taxation, p. 14, *and Note* 3;
Burroughs on Taxation, p. 391.

A Court of Equity has no power to collect taxes imposed for purposes of local government, either before or after the

dissolution of such government. It is not the exercise of judicial, but of legislative power.

Cooley on Taxation, p. 33, 34;
19 *Wall, pp.* 107, 120;
19 *Wall, pp.* 660, 661.

It is the province of judicial power to decide private disputes between or concerning persons, but of legislative power to regulate public concerns, and to make laws for the benefit and welfare of the State. The Legislature must therefore determine all questions of State necessity, discretion or policy, in ordering a tax and in apportioning it; must make all necessary rules and regulations, in order to produce the desired returns, and must *decide upon the agencies* by *means* of which *collections* shall be made.

Cooley on Taxation, pp. 33, 34.

Taxes imposed for carrying on the affairs of a municipal corporation, if uncollected, upon the dissolution of the corporation would lapse, if not kept in force by legislative action, showing a contrary intent. The repeal of a tax law before the tax is collected puts an end to the tax itself, where no rights are reserved in the repealing act, and nothing in the act indicating a contrary intent.

Cooley on Taxation, p. 14;
~~*Howe vs. Starkweather*, 17 *Mass.*, 250;~~
Fenelon's Petition, 7 *Penn. St.*, 173;
Augusta vs. North, 57 *Me.*, 392;
Mitchell vs. Board of Trustees, 71 *N. C.*, 400;
Abbott vs. Britton, 23 *La. An.*, 511;
McGuilquin vs. Doc, 8 *Blackf*, 581;
~~*Mount vs. State*, 6 *Ia.*, 25;~~
Ross vs. Lane, 3 *S. and M., 695.* 714

Taxes imposed to carry on the affairs of local government are not debts in the ordinary sense of the term.

Cooley on Taxation, pp. 13 *and* 14.

They are the positive acts of government through its various agents, binding upon the inhabitants, and to the making

and enforcing of which their consent, individually, is not required.

Pierce vs. Boston, 3 Met., 520;
Perry vs. Washburn, 20 *Cal.*, 318;
Webster vs. Seymour, 8 *Vt.*, 135, 150;
Johnson vs. Howard, 41 *Vt.*, 123.

2. *The lien on real estate for taxes. For whose use. Remedies for collection of taxes. What and for whose use.*

Taxes are not liens upon the property against which they are assessed, unless made so by express legislative authority.

Cooley on Taxation, 307; 38 Penn. St., 339;
3 Met. Ky., 148; 19 Wall., p. 655,

The lien is not only the creature of statute, but is declared from public considerations, to aid government in the collection of its revenues, and not for the benefit of creditors, who hold the obligations or securities of government, or for its officers, servants or agents, employed in the administration of its affairs.

93 U. S. R., p. 265.

The dissolution of the corporation confers no right, or equity, upon the corporate creditors, as to this lien, which they did not possess, when the corporation was in existence.

Very summary remedies have been allowed, in every age and country, for the collection by the government of its revenues. They have been considered a matter of State necessity.

Cooley on Taxation, 298, 299.

Besides these extraordinary remedies, government may also, probably, resort to the ordinary remedies for enforcing the collection of its taxes.

Cooley on Taxation, p. 13, 14; 19 Wall., 229;
Burroughs on Taxation, p. 252, 253.

But these are the remedies of government. Can they be put in motion, and enforced by any one else? Can the gas

company, which furnishes the corporation lights, or the fireman, who puts out fires, or the druggist, who furnishes medicines for the hospital, or the contractor, who paves a street, or builds a bridge, upon the assumption that certain revenue, in process of collection, is designed for his benefit, take possession of these remedies, and enforce them for his use?

As to these revenues, the maxim, *nullum tempus occurrit regi*, applies.

See City of Memphis vs. Looney et al., 1 Baxter's Legal Reporter, pp. 288, 290, 291.

Can those having demands against the corporation, step into the shoes of government, as to this maxim, in collecting and applying these revenues?

After the tax payer has contributed his tax, and it is in the treasury, if the corporate officials embezzle it, or it is stolen, it is the loss of government. Why? Because it is public revenue. The citizen may be compelled again to contribute to the disappointed uses for which the taxes so stolen, or embezzled, were imposed and collected. But has the party for whose use the embezzled or stolen revenue, in the case supposed, was imposed and collected, any remedy against the collector? Could he move against him and his sureties? Would any suit lie against the collector, at his instance? Clearly not.

When one of these corporations, from any cause, ceases to exist, what becomes of the tax leins and remedies? Do they survive? If so, to whom? Can the Courts administer them? If so, for creditors who have unpaid demands against the extinct corporation? Do the Courts succeed to the revenue machinery and political power of the State upon the dissolution of such a corporation for the purpose of winding up its affairs — affairs that relate almost exclusively to the public trusts delegated to it by its principal, the State sovereignty? Undoubtedly not.

If there is no succession to the Courts, or to those who

have claims against the defunct corporation, then upon what principle can the Courts administer these taxes?

Can the Court appoint a receiver who combines the functions of a public administrator, a trustee and a tax collector, to carry out this extraordinary jurisdiction?

Upon the corporate dissolution does title, to the public property and the taxes levied and unpaid, vest, equitably or legally, in the corporate creditors; and can a Court of Equity, in the exercise of its general jurisdiction, independent of the remedies and agencies of the State, furnish the instrumentalities and remedies for converting the same into money for corporate creditors? Creditors acquire no such rights upon the dissolution of a political corporation. No such relief can be afforded them by the Courts.

The fact that the corporation, for which the taxes were imposed, is not in existence, does not authorize the Courts to intervene. It rests with the Legislature, either to let the taxes fall, with the government, for whose use they were imposed, or to devote them to some other lawful use, and to furnish a tax collector, with authority to collect them.

It is as much the business of the Legislature to collect as it is to impose the tax. Laying the tax is but one step, in many, toward raising money by taxation. All the steps are alike legislative and not judicial.

Cooley on Taxation, *p.* 33, 34;
19 *Wall*, 660, 661.

The cessation of the corporation, by time, unavoidable circumstances, or the positive act of the Legislature, with unpaid creditors, can, in no conceivable way, and upon no judicial ground, authorize the Courts to succeed to the place of the State, as to the public property and delinquent revenues pertaining to the municipal rule of such corporation. The dissolution of the corporation remits the whole subject to the legislative sovereignty.

IV.

Question 4.

Extinction of debts and demands due to, and from a municipal corporation, whose charter has been repealed.

The repeal of the charter of a municipal corporation does not extinguish the debts which it owes. The obligation of its contracts survives, and, they may be prosecuted against any property, owned by the corporation, at its dissolution.

Mumma vs. Potomac Co., 8 Peters, 281, 284;
Broughton vs. Pensacola, 93 U. S. R., pp. 268, 269.
See per contra, 13 Sm. & Mar., p. 157.

But the uncollected revenue imposed for its use, as an arm of government, and the property held by it, for public uses, do not constitute a fund for creditors. The one is held, and the other "levied and collected, for the public use, and upon public trusts." To these the State sovereignty at once attaches, upon the revocation of the local agent of government, in behalf of the public. Corporate creditors do not succeed to them.

IV*a*.

Upon the entire record can any relief be granted? Assessments by the court against the citizen and his property. Upon the extinction of a municipal corporation, have its creditors any relief, except through the legislature? Questions 8, 9, 10.

These questions will be considered together.

Complainant can subject, under these bills, nothing but such property as the corporation owned, at its dissolution, in its *own* right, and which was *charged* with no *public* trust.

Broughton vs. Pensacola, 93.
U. S. R., 268, 269;
1 *Dillon on Mun. Corp., sec.* 446.

As already shown, they are not entitled to the corporate revenues and taxes, uncollected, at its dissolution, nor to the

property held for uses of government. What relief are they entitled to, against the citizens and property owned by them, situated within the local territory? The relation of debtor and creditor does not exist between these creditors and the citizens. They have no lien on their property. It is not a trust fund for the payment of the corporate debts. It can no more be seized for the corporate debts than could the property of another corporation. The inhabitants are not joint and several debtors with the corporation, nor does their property stand in that relation to the corporation, or to the creditors.

19 *Wallace*, 117, 119;
Id., 658, 659; 93.
U. S. R., *pp.* 265, 268, 269;
Burroughs on Taxation, 456, 457.

Neither the devices and contrivances of the corporate officers, aided by the legislature, whereby the remedy at law is rendered fruitless, nor the resignation of officers to evade the process, nor the want of officers, *dejure* or *de facto*, to whom it may be directed, nor the destruction of the corporation, will furnish grounds upon which a Court of Equty has jurisdiction, at the instance of creditors, to give relief of any kind, or in any way, by a direct proceeding for that purpose, against the citizen and his property.

These questions were presented for decision, and decided adversely to creditors in

Rees vs. the City of Watertown, 19 *Wall.*, 107;
Heine vs. Levee Commissioners, *Id.*, 655;
Barclay vs. Levee Commissioners, 93 *U. S. R.*, 253.

The questions raised by the certificate of division in Rees vs. City of Watertown, were as follows:

1. Whether when the principal and interest on the bonds were unpaid, as well as the judgment, and there being no property on which to levy an execution, the plaintiff was confined to a remedy at law, by mandamus or otherwise, to enforce the payment of his judgment recovered in this Court.

2. Whether it was competent for the Court, as a Court of Equity, on the failure of the officers of the city of Watertown to levy the tax, as required by law, referred to in the bill—through their neglect, refusal, absence, or resignation—to appoint the Marshal of the Court to levy and collect the tax to pay the judgment.

3. Whether it was competent for the Court, as a Court of Equity, to subject the taxable property, situated within the corporate limits of the city of Watertown, in *any way*, to an assessment, in order to pay the judgment of this Court, referred to in the bill of complaint.

See pp. 110, 111.

The questions were all resolved against the right to relief. It appeared by the undisputed facts of the case that by "the devices and contrivances of the city officials, aided by the legislature," that the "legal remedy" of the plaintiff "had been unreasonably obstructed, and was fruitless." The Court was quite willing, therefore, to give him the aid requested.

Mr. Justice Hunt, delivering the opinion of the Court, says: "A voluntary refusal to pay an honest debt is a high offense in a commercial community, and is just cause of war between nations. So far as the defense rests upon these principles, we find no difficulty in overruling it. There is, however, a grave question of the power of the Court to grant the relief asked for. We are of the opinion that the Court has not the power to direct a tax to be levied for the payment of these judgments. This power to impose burdens and raise money is the highest attribute of sovereignty, and is exercised, first, to raise money for public purposes only, and, second, by the power of legislative authority only. It is a power that has not been extended to the judiciary. Especially is it beyond the power of the Federal judiciary to assume the place of the State in the exercise of this authority, at once so delicate and so important."

See pp. 116, 117.

Again, in the same opinion, Mr. Justice Hunt says: "The plaintiff insists that the Court may accomplish the same result under a different name; that it has jurisdiction of the persons and of the property, and may subject the property of the citizens to the payment of the plaintiff's debt without the intervention of the State taxing officers, and without regard to tax laws."

Id., p. 117.

But relief was, also, distinctly refused, in this view of the case, because, "upon general principles of law and equity jurisprudence," the Court had no power to grant it.

See pp. 121, 122.

The same question was again considered in Heine vs. Levee Commissioners, 19 Wall., 655.

In delivering the opinion of the Court in that case, Mr. Justice Miller says: "This proposition was directly in issue, and distinctly settled in the case of Rees vs. the city of Watertown, at the present term. In that case the plaintiff had obtained judgment, issued execution, which was returned *nulla bona*, and had then procured a writ of mandamus, ordering the aldermen of the city to levy the tax. The aldermen resigned before the writ could be served, with intent to evade its effect. After other aldermen were elected, a new writ was served on them, and they in turn resigned, after an order to show cause why they should not be punished for a contempt in failing to obey the writ of mandamus. Notwithstanding all this, we held that Chancery had no jurisdiction, by a direct proceeding, to levy the tax, or to seize the property of the citizens and sell it for the satisfaction of the judgment."

p. 658.

Again, in the same opinion, Mr. Justice Miller says: "There does not appear to be any authority founded on the recognized principles of a Court of Equity, on which this bill can be sustained. If sustained at all, it must be on the very broad ground that because the plaintiff finds himself

unable to collect his judgment at law, it is the duty of a Court of Equity to devise some mode by which it can be done. It is, however, the experience of every day, and of all men, that debts are created which are never paid, though the creditor has exhausted all the resources of the law. The holder of a corporation bond must in common with other men submit to this calamity, when the law affords no relief. The power we are here asked to exercise is the very delicate one of taxation. This power belongs in this country to the legislative sovereignty, State or National. In the case before us the National sovereignty has nothing to do with it. The power must be derived from the Legislature of the State. So far as the present case is concerned, the State has delegated the power to the Levee Commissioners. If that body has ceased to exist, the remedy is in the Legislature, either to assess the tax by special statute or to vest the power in some other tribunal."

Id., *pp.* 660, 661.

The same points were brought in judgment again in Barclay vs. Levee Commissioners. (93 *U. S. R.*, *p.* 258.) In that case it was determined that the corporation was extinct, and consequently there were no officers to levy a tax, or to whom a mandamus could be directed commanding the levy of a tax. That the plaintiff was in fact without any remedy at law. Yet the Court could give him no relief against the inhabitants of the local territory, or against their property. That a creditor of a municipal corporation, in such a situation, was forced to rely for relief upon the public faith of the Legislature.

No case can be found in conflict with these opinions, except the Circuit Court decision of Welch vs. Ste. Genevieve, (1 Dillon, C. C. R., p. 130,) which was expressly disapproved in Rees vs. city of Watertown.

Elementary writers treat the question as at rest, by the unanswerable force of these thoroughly considered cases.

Cooley on Taxation, 33, 34;
Burroughs on Taxation, 456, 457.

The public creditor knows when he contracts with the National or State government, or any subordinate branch of the State government, that he must rely on taxation for payment, and that taxation belongs to the legislative sovereignty, and is a subject over which Courts have no control.

When a municipal corporation, therefore, which is a branch of the domestic government of the State, is extinguished, by repeal or otherwise, the creditor's only remedy rests with that arm of the government to which the question of taxation has been confided under our form of government.

What public creditor in all the past was ever paid, except by means of taxation? None.

For years and in numerous cases, the legal remedies have proven fruitless. When the Courts have given these baffled creditors all the relief which judicial methods and remedies afforded, they have refused to listen to their persistent appeals to seize the power that belongs to another department of government and wield it in their behalf. In every such case the creditor has been referred to the legislative sovereignty as his only means of relief.

Nor can the Courts assume that the Legislature will prove derelict in its duty, and provide no remedy for demands such as are here presented. The legislative department, as well as the judicial, in the performance of its duties, acts under a sense of the obligations imposed upon it, and of its duty to observe good faith; and it can no more be assumed that one will prove false to its trusts and duties than the other.

The Legislature of Tennessee has not been unmindful of a sense of its duty to these creditors. It has provided a remedy for them, and others in like condition. It has continued in force and appropriated to their benefit all the delinquent revenues of the old corporation, amounting, according to the allegations of the bills in these causes, to about two-and-a-half millions of dollars. It has provided the means for the collection of these taxes. It has gone further and instituted steps to inform itself as to what additional relief should, in

justice, be provided for complainants and the other creditors of the city of the Memphis.

See Acts of 1879, *p.* 332.

V.

Section 4 *of the act of January* 29, 1879. *Section* 14 *of the act of January* 31, 1879. *The act of March* 13, 1879.

Section 4 of the act of January 29th, 1879, (the act repealing the city charter,) remits the government of the local territory to the State, withdraws all power, including taxation, committed to the local government, and transfers to the custody and control of the State, all the public property that the dissolved corporation had used for purposes of government.

See Acts of 1879, *pp.* 14, 15.

There is nothing in this provision, in conflict with the State or National Constitution.

Section 14 of the act establishing the Taxing District, and providing local government for the same, turned over to the new government, the public property used by the extinct corporation, to-wit: Streets, wharves, squares, fire engines, etc., for the benefit of the local public.

This section of said act also vested the taxes which were unpaid, and which had been imposed for said corporation, in the State, to be disposed of for the benefit of the creditors of said corporation, except the privilege tax, which had been set apart for the payment of the firemen and policemen, by former legislation, and that tax it applied to the use of said firemen and policemen.

It was within legislative competence thus to dispose of said public property and revenue.

This was property that no creditor of the city, through the Courts, could subject to his demand.

2 *Dillon, secs.* 446, 512.

IN THE

Supreme Court of the United States

IN EQUITY.

MINOR MERIWETHER, RECEIVER, &c., AND OTHERS, *Appellants*,

—VS.—

ROBERT GARRETT & SONS, AND OTHERS, *Appellees.*

No. 916

REPLY

Of GANTT & PATTERSON, of Counsel for Appellants, to Briefs of Counsel for Appellees.

I.

To position that no repeal is valid which leaves creditors without remedy in the Courts.

It is insisted, that the power to repeal cannot be successfully exercised, unless some remedy is left, which is adequate for the corporate creditors. No such doctrine finds support in the authorities.

The nearest approach to it, is the dictum of Judge Dillon, in sec. 114, of his work on Corporations. This was written before the case of Welch vs. Ste. Genevieve, (1 Dillon C. C. R., p. 130) had been disapproved by this Court.

The cases, cited in the note, by the author, refer either to private corporations, or do not present the question, except the case in 13 Sm. & Mar. p. 157, which is directly opposed to the suggestion of the text.

The Legislature cannot continue the agent, and take away the power to tax, which it possessed, at the time it contracted, whilst the debt is unpaid.

4 Wall., 535.

But the courts cannot compel the Legislature to prolong the existence of the agent, because its destruction may leave unsatisfied creditors.

When the sovereign power considers whether it will continue, or abolish, one of the instruments of local government, it is, only bound, to consult the public welfare. The claims, of creditors, cannot, for a moment, stay its hand.

II.

Vested rights of dissolved corporation invaded by sec. 14 of the Act of January 31st, 1879.

13 Sm. & Mar., p. 645, 5 Sneed 192, 10 Barb., 223, 2 Kent, 305, and note, 4 Wheat. 663, 9 Cranch, 53, 50, 292, 236, 27 Vermont, 704, are relied on, to show the invalidity of section 14 of the act of January 31, 1879, which provides that "all indebtedness for taxes, or otherwise," due to the dissolved corporation, "shall vest in, and become the property of the State, to be disposed of, for the settlement of the debts," of such corporation, as might thereafter "be provided by law."

They do not support the position.

1. The city had no vested right in these taxes. They were all imposed for public purposes. It is not the case of some private grant, (1 Dillon on Mun. Cor., sec. 40) or of an existing city, deprived of the revenue, arising from some of its

franchises, which, are in force, (13 Sm. & Mar., 645), nor the case of a trust vested in the city, which a court would administer, notwithstanding the repeal of the charter, (1 Dillon on Mun. Corp., sec. 37.) But a legitimate exercise of power over the funds and revenues of the extinct city.

1 Dillon on Mun. Corp., sec. 35, 64.

2. Nor can creditors complain. The taxes and other indebtedness are vested in the State, as trustee, for their benefit.

III.

Authorities relied on, for proposition, that taxes are private property of dissolved corporation, and liable for its debts.

To establish the proposition that taxes, levied by a dissolved municipal corporation, for its use, and uncollected, at the date of its dissolution, are property, or effects, of such corporation, which a court of equity will apply to its creditors, counsel, for complainants, cite 2 Yer., 166; 3 Cald., 568; 4 Dillon, C. C. 66, 482; 2 Dillon on Mun. Corp., sec. 652; Cooley on Taxation, 13, 300; 5 Sneed, 186.

They fall far short of supporting the proposition.

1. They establish that municipal corporations are not limited to the *statutory* remedy, in collecting taxes, but may collect by debt, or assumpsit.

2. The case, in 5 Sneed, 186, is authority for the proposition, that the legislature of Tennessee, had no power to take revenue, that Davidson county had raised by taxation, and give it to the city of Nashville, a municipal corporation, within said county.

IV.

Government treated as an individual. When? How far?

It is not denied that government may enter into contracts, and in so doing, so far lay aside its sovereignty, that it will

stand, as to the property involved in such contract, like individuals.

9 Wheat, 904; 3 Peters, 401; 15 How, 304.

But, it is difficult to perceive, how this has any application, to the creation of municipal corporations. In the creation of such corporations, it is the sovereignty that is exerted. All such corporations may, to a greater or less extent, make contracts, but that cannot change the essential character, and nature of the act, or the corporation, which is the result of the act.

It is true, that when the State lays aside its sovereignty, and enters into a contract, that all the property and avails, of that contract, will go to creditors, and the courts will treat the State, as an individual, as to such dealing. (15 How, 304.) But, suppose the property involved, in such dealing, is exhausted, leaving creditors unpaid, can the sovereignty be forced to pay? The creditors then find themselves, face to face, with the sovereignty. How is the sovereignty to be reached, and with what remedy? Are all the inhabitants stockholders, and does all their property, stand for capital stock, as in case of a private corporation, for unpaid debts, as contended by the other side? Do creditors have a lien thereon, which courts can enforce? Clearly not. What would be true of the nation, or the State, in this regard, is equally true, when considered in reference to local governments, for they are but arms of the State government.

V.

Uncollected taxes a trust fund for creditors.

It is claimed that the corporation held these taxes, in trust, for the benefit of complainants; and that a court of equity will not let the trust fail. What part of them? Those levied for specific creditors? Suppose, for the argument, this be granted. The result would be, that each creditor would get enough of what was levied for him, to pay his debt. What would become of the balance? Could any other creditor

claim it? No. The levy was for another, not for him. The creditor, for whose use it was levied, could not sell or assign the surplus. What would become of it? Again, if it be true, that the creditor has a right to the taxes levied for him, so far as necessary, to pay his debt, because it was so levied, and, furthermore, that it cannot be diverted from his use, it follows, that as to all taxes not levied for him, he has no claim; but these go to the uses for which they were levied. The designation of a use is for public convenience. It gives to the intended use, no property in the tax.

Dillon on Mun. Cor., secs. 35, 64; 14 Ill., 142.

After the tax is collected, possibly, it would be otherwise.

2 Woods C. C., 108, 110, 112.

It is straining the law, beyond what is permissible, to make a trust of these taxes, and administer them, for creditors, on the dissolution of the supposed trustee, even if there were no difficulty in the way, growing out of the fact that such taxes belong to the public.

VI.

Section 49 of the Code. The Act of March 13, 1877.

It will be seen by reference to the provisions of the act of March 13, 1877, that it is not only confined to the State Court of Chancery at Memphis, but that it embraces a plan for setling the debt of the city, by compromise, through the instrumentality of a receiver, and two commissioners, and the issuance of bonds for the debt. None of the bills, in these causes, are filed with the view of carrying that act into effect. It is now impossible to do so, by any Court.

See Acts of 1877, p. 89.

2. It is insisted that, because one of the bills, was filed, before the repeal of the city charter, that section 49, of the Code, makes the repeal inoperative, as to corporate creditors. This is not so, for several reasons.

1. It was not intended by that section to prevent the State

from exercising its rightful control over its political corporations.

2. A bill filed to subject the revenues of a public corporation, is without equity, and can give no rights whatever.

3. Section 49 was not designed to confer rights, or remedies, where none existed; but to save litigation, properly begun, and which entitled the party setting it on foot, to the redress sought.

4. But if it has any effect, whatever, on the litigation, it is limited to the case of Robert Garrett & Sons.

VII.

The proprietary or private side of political corporations.

As to the obligation of contracts, and, the proprietary side, political corporations stand, substantially, like individuals.

1 Dillon Mun. Cor., sec. 39; 2 Id., secs. 761, 773, 779.

But, when they become liable, through the dealings of the private side, and, their property is exhausted, and, creditors ask pay, out of the property of the citizen, then the pay must come through the political side. When it comes, from this source, it is as the nation, or State pays,—that is, by taxation. The loss of power to pay, in this way, is inevitable, when the corporation is destroyed. No one can claim that he is wronged by such destruction, since none can say, that he was ignorant of the well-known power to destroy, and the inevitable results therefrom.

VIII.

Not left remediless.

On the same day that the city charter was repealed, this reservation for the corporate creditors was made, viz.:

"That all indebtedness for taxes or otherwise, whether in litigation or otherwise," due to said corporation, "shall vest

in, and become the property of the State, to be disposed of, for the settlement of the debts," of the corporation, in such manner as might thereafter be provided by law.

See sec. 14, Acts of 1879, p. 26.

This was followed by the act of the 13th of March, 1879, which, in terms, applied the uncollected taxes to the debts of the corporate creditors.

See Acts of 1879, p. 127.

These acts provided a fund, for the corporate creditors, according to the allegations of the leading bill, of two millions five hundred thousand dollars.

See Record, p. 8.

Almost sufficient, at the price of city indebtedness, to pay off the entire debt.

See Record, p. 3.

Again, on the 1st of March, 1879, it was provided by resolution, that the Governor appoint five commissioners, to inquire into the condition of the corporate debt, and to confer with the holders thereof, and to report to the Legislature, then in session, or to the next, what action ought to be taken, with reference to said debt.

See acts of 1879, p. 332, 333.

With such a record, can want of good faith be imputed to the Legislature? Is it not doing its duty? Are these complainants left remediless?

So far from these legislative steps being matter for complaint, do they not extend to the corporate creditors, a large and substantial measure of relief; and give earnest, that they will be dealt with, in a spirit of fairness, by the Legislature?

GANTT & PATTERSON,
Of Counsel for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1879.

Minor Meriwether, Receiver of the City of Memphis, and others,

Appellants,

No. 916. *vs.*

Robert Garrett & Sons, and others,

Appellees.

APPEAL FROM CIRCUIT COURT OF UNITED STATES FOR WESTERN DISTRICT OF TENNESSEE.

IN EQUITY.

Argument for Appellants.

J. B. HEISKELL,
Of Counsel.

Thomas McGill & Co., Law Printers, 1107 E Street Northwest.

Supreme Court of the United States.

OCTOBER TERM, 1879.

Minor Meriwether, Receiver, &c.,

No. 916. *vs.*

Robert Garrett & Sons et als.

Argument of J. B. Heiskell, for Appellants.

These cases present thirteen points, on which the opinions of the judges below were opposed; but the most convenient mode of treating the case in argument will be to divide into four principal heads the questions involved. The real questions in the causes are—

First. Can the legislature of a state abolish a municipal corporation, and place the territory of it under a new and distinct government?

Second. Can a circuit court of the United States assume the control of an existing municipal corporation because insolvent and not faithful to its trust?

Third. Can a circuit court of the United States take jurisdiction to administer the revenue and public property of a dissolved corporation, in part or in whole, and appoint a receiver to take charge of its effects and uncollected taxes, when the State has provided officers to perform the duties?

Fourth. Can the circuit courts of the United States assess and collect taxes to pay the debts of a dissolved corporation, on the persons and property occupying the territory of such dissolved corporation; and if so, does the duty to pay the debts follow the persons of the corporators and the property once in the corporation, or does it attach upon the territory and the person and property which may be there when the assessment is made, without reference to their previous connection, or want of connection, with the corporation while existing?

These questions embrace the whole subject involved in these cases.

Can a city be abolished?

Upon the first proposition, no extended argument is necessary, for two reasons—

First. That the relief in all the bills, save the first, is based upon the fact of dissolution, and the relief prayed is wholly on that aspect of the matter.

Second. The supreme court of the state has directly passed upon and affirmed the validity of the statute of repeal and the constitutional power of the Legislature to pass it, and that decision is conclusive. (Railroad Co. *v.* Georgia, 98 U. S., 359.)

If it were not, the authorities cited in the briefs of my associates are full to the point. To them I add—

The State *v.* St. Louis Co., 34 Missouri, 572, cited and quoted in Cooley on Const. Lim., 238*n*.

Barkley *v.* Levee Commissioners, 3 Otto, 258.

Heine *v.* Levee Commissioners, 19 Wall., 655.

Jurisdiction of United States courts.

The next two questions, in their practical bearing on these cases, are mainly interesting to the respective receivers whose personal rights and emoluments are involved in the result. To them the great point is, which is the proper officer to collect and disburse the fund; but to the public, whose interests I more especially represent, this is a subordinate question. The

legal questions are of interest, and will be discussed rather for that cause, and for the light the discussion throws on the vital questions, than for the reason that any public importance is attached to the question which of two very good men is the right one to administer these effects.

The second and third questions are very like in character. The first involves the power of a court of equity to displace the authorities of an existing corporation and to put a receiver in the place of the regularly-constituted State authority, and the other the like question as to a dissolved corporation.

The principle upon which Judge Story was able to place the right to administer the assets of a dissolved private corporation, and which has been followed universally, was that the funds of a moneyed corporation were a trust for the creditors and stockholders. In the case of Broughton *v.* Pensacola, 93 U. S., 269, the same doctrine was announced, though not the point in judgment, as to a municipality, and, I take it, with the same limitation implied. That is to say, it is said in that case that the property of a dissolved municipal corporation will be taken in charge by a court of equity. Of course this must be read in connection with what precedes and with the qualification the context naturally imposes; that is, "so far as it is affected by a trust for creditors." The language is: "The obligation of contracts made whilst the corporation was in existence, survives its dissolution, and the contracts may be enforced by a court of equity so far as to subject for their satisfaction any property possessed by the corporation at the time. In the view of equity, its property constitutes a trust fund pledged to the payment of the debts of creditors and stockholders; and if a municipal corporation, upon the surrender or extinction in other ways of its charter, is possessed of any property, a court of equity will equally take possession of it for the benefit of the creditors of the corporation. In this case it is averred in the bill that the city of Pensacola, upon the surrender of its original charter, did not possess any property." (Broughton *v.* Pensacola, 93 U. S., 269.) Without intending to concede anything in this argument upon the point contested by my associates, (that taxes are not assets or subject to trusts, in a strict sense,) I

present my views on the assumption for the time that the doctrine of trust is applicable to the property and taxes of a dissolved corporation. I understand that theory to be, that whatever property of a municipal corporation is subject to the payment of debts, will be so administered and applied by the courts. Whatever, in other words, is held in trust for creditors, the courts will administer. But whatever is held in trust for *the public* or others, it is not the intent of the court to declare subject to be so administered and applied *to the use of creditors.* A court of equity never perverts a trust,—never applies what is held in trust for one purpose to another wholly alien purpose.

Now, the city of Memphis did have several classes of property and revenues. First, it had property devoted by law to public use,—fire engines and houses, city hall and buildings, which were never held in trust for creditors, and which no court can so apply. This property, though claimed in the bill, was decided by the court below not to be subject to the complainants' claim, and this view was, I may say, acquiesced in by them; yet it will be seen that the decree as drawn and entered (folio 453) appropriates everything the city had to the complainants' debt.

It had certain taxes uncollected, which by the charter were devoted to specific public purposes; as, to the payment of the fire and police departments, the public schools, and other city expenses; and these, it was held below, could not be reached by these complainants, and these funds were ordered to be paid out below, all parties being satisfied that they were not subject to these creditors, and they have been, so far as collected, so paid out.

Again, the city is the owner of a considerable amount of uncollected taxes, assessed for other purposes, which by the dissolution are not needed for the uses for which they were assessed, but which are fixed with a trust for those uses and no other, and which cannot by judicial power be diverted from those purposes. As they cannot be used for the purposes for which they are intended, or for any other, they must lapse but for the act of the legislature providing for the disposal of them.

The city has bought in certain lands for taxes. The taxes on

which the purchases are made are for divers years and for different purposes. If they remain subject to redemption, the money is clothed with the varied trusts to which the original taxes were subject; and if the lands are subject to sale, the proceeds are to be applied to the same varied trusts, some of which have lapsed, others not. But none of these lands are wholly held in trust for any creditors; all perhaps are partially so.

Much of these lands are sold also for state and county taxes; formerly by separate sales, but latterly by a joint proceeding for the state, county, and city, which are entitled to satisfaction in the order named, the city being last. These lands, many of them, are no longer subject to redemption, and the right of the state to dispose of them is absolute.

Taxes remain uncollected which were levied to pay debts of complainants, and these, all admit, are properly to be applied in some way to their claims. As to these, the question is how and where? For instance, T. E. Brown has had levies made to pay his whole debt; then he has had new levies made to pay a large uncollected balance; then he has had a new levy to pay still uncollected balances; and so on, perhaps having outstanding taxes uncollected more than three times the amount of his balance of debt. He shows in his bill that on the 1st of July, 1878, there was due to him $102,122.93, with interest for three years three months and a half, say $20,000. To pay which, there had been levied taxes, remaining uncollected, to the sum of $367,859.68. (fol. 167.) This was levied in trust for him and no other, and every dollar of this over and above what is sufficient to pay him would lapse (but for the State law of 1879 saving it) just as if it was levied to pave streets or to pay the fire and police departments, and could not be used for that purpose. Other creditors have, perhaps, levies insufficient to pay their claims. But they have no claim to Brown's fund, and he none to theirs. What was levied for them, is subject to no trust for him; what is levied for him, is not in trust for them.

Loudon (fol. 88) took his contract with the express contract stipulation that he was to look alone to the specific levy made at the time of the contract, and he can look to no other fund

and no other remedy. His judgment was obtained subject to this condition; (fol. 115;) yet a general decree for all the debts and against all the property is entered. (fol. 453.)

It is apparent, from this general statement of the facts, that the question of the right and power of the courts to administer these funds and properties without legislative aid, is seriously complicated, to say the least.

In this state of things the state has passed a law for the administration of these funds and properties, preserving the taxes from lapse,—devoting the public taxes and the special property of every kind but the public property, and all the effects, to the payment of debts, but at the same time prescribing the modes of proceeding and the officers and courts through whom this administration is to take place.

When the charter was repealed, the power to pass this act was reserved and the state treasury made the custodian of the funds. Then the law was passed by which the state appointed a receiver and tax collector to take charge. There never was a moment of time during which the custody of the fund was not provided for and a proper state officer pointed out to attend to the collection of it, and no delay occurred in providing for its administration;—while the city was in life, its officers; and since, the treasury and the receiver successively, have been charged with these duties.

In this state of affairs, several things are apparent:

1st. That there is no need of the jurisdiction which the circuit court is called upon to exercise.

2d. That it could, at most, independent of the state law, only administer to each creditor the specific fund levied for his debt, or for debts in general, and that the relief must be very limited and imperfect.

3d. That the funds devoted by the state law to creditors not before or otherwise held in trust for them, cannot be administered by any officer or authority other than that appointed by the state; and that the exercise of a partial jurisdiction by the

circuit court of the United States can only have the effect to breed delay, confusion, conflict, expense, and waste.

But the authorities establish that the right does not exist in a chancery court to take the collection of taxes out of the hands of a State authority.

The state has its own modes of dealing with its own and its city tax-payers or tax-owers, and these modes are dilatory and indulgent to a fault. But if the state saves these taxes—stated in the original bill of R. Garrett & Sons at $2,500,000—from lapse, she has the right to say upon what conditions she does it, and in what times and modes the taxes so saved shall be collected, and by whom and when paid over. But this right is exercised subject to the express saving in the act of 1879, chap. 92, s. 5:

"*Provided, however*, That nothing herein contained is intended to interfere with any vested right which entitles the party having such right to a speedier collection, but only to extend the indulgence where the State has the power to do so without interfering with vested rights." (App. to Mer. Br., p. 76.)

It also saves the right to collect in money, where such is the right of the party, and this to be decided in a summary way. (Id., s. 5, p. 75.)

But there is another view of this question of jurisdiction. The states regulate successions, administrations, executorships, just as much as they regulate heirship and marriage and the rights of husband and wife, not because these subjects are reserved to them by the federal constitution, but because the power is not ceded to the United States. Now, I maintain, as a self-evident proposition, that by the same inherent power which enables them to say who shall administer an estate, they have the right to say who shall represent in their courts--in all courts—a deceased public corporation of their own creation. And it seems to me evident, that as United States courts can in no manner appoint an administrator in a state, (Fouvergne *v.* New Orleans, 18 How., 473,) so they can in no manner appoint

the correlative agency, successor, or personal representative of a dissolved corporation.

The courts of the United States, if they entertain this jurisdiction, merely sit to administer the laws of Tennessee, and, so far as the jurisdiction depends upon non-resident parties, only to the end that they may take no detriment from the possible bias of State judges administering the same law.

If there are actions to be brought by or against the representative of an estate, this court can entertain jurisdiction of the case at the suit of or against the representative; and, by a parity of reasoning, they could entertain jurisdiction of the person of the representative of a corporation, provided the nature of the case is such as to give them the jurisdiction. That is, they can adjudge the rights of any creditor against the estate represented. But here another question arises: Can they transfer the whole administration of an insolvent estate, being administered under a state law, from the probate courts of the state to the courts of the United States, and there administer the whole estate, because A, B, and C, creditors of the estate, are non-residents, and thus bring in all the debtors and creditors to have the estate there generally wound up? It seems to me too clear for argument, that even where the creditor can institute the insolvent proceeding against an administrator, he can only institute it where the state law provides that it shall be instituted,—that is, in its own probate courts; and if concurrent jurisdiction of such probate and administration causes is conferred on chancery courts, they are *pro hac* probate courts, and not courts of chancery jurisdiction.

Now, the State of New York, I believe, has a system of winding up insolvent corporations. Suppose it confers on the chancery court the power to appoint a commissioner to represent the concern, who is to sue and be sued, plead and be impleaded, and prescribes a state court in which his proceedings are to be conducted: does this give to a court of equity the power to appoint that commissioner as a court of equity, or as a statutory power? And does it confer on a court which has the common-law powers of a chancery court only, as this court has, the power to proceed in such mode and in such cases? As I

have said, perhaps they might entertain suits against him when appointed; but appoint him they could not; administer the general routine of his business they could not.

But this case is not yet precisely that. Here the provision for the appointment does not vest that in any court, but in the executive. Here there is no provision for any but one suit: that to be instituted *by*—not *against*—the receiver; and all others are to be brought in under that suit in a summary way, and in no other mode.

In Mumma *v.* The Poto. Co., 8 Pet., 287, Judge Story says: "There is no pretense to say that a suit can be maintained and a judgment had thereon against a dead corporation any more than against a dead man." In this opinion he treats the act of the legislature appointing the mode of administering the dissolved corporation as analogous to the mode of distributing the assets of a deceased insolvent debtor. This act treats it the same way. The act provides that the chancery court, in the exercise of the jurisdiction conferred by this act, shall have all the powers possessed by such courts in the administration of the estates of insolvent natural or corporate persons. (s. 4, Mer. Br., 74.)

The bill assumes that the corporation is dead. The supreme court of the state has so decided. Meriwether is the personal and corporate representative. Can any suit proceed without making him a party in the suit against the dead corporation, or in any mode but that provided by the state law?

It is true he is made a party here, but only for the purpose of praying an injunction against his acting at all, and not to ask any relief against or aid from him.

This view does not defeat at all the jurisdiction of the United States courts; for they can remove any of these suits, instituted there by petition, to the United States courts, if they can be brought under the recent and liberal acts for that purpose, and so save non-residents from all prejudice or bias of the state courts; but I deny that they can entertain a general bill to supersede that provided by the state, and substitute for a proceeding prescribed to be instituted by the state officer, one brought against him.

I need hardly cite authorities upon propositions so plain; but this court has held, in the case of Mumma *v.* Poto. Co., already cited, that the provision which the state makes is valid.

The authority to commit the appointment of a receiver to the political power, is not denied. But it has been affirmed in Carey *v.* Giles, 9 Ga., 253, and in McLaren *v.* Pennington, 1 Paige, 102. In this latter case, where there was a general law for the appointment of trustees, the Legislature provided for special trustees in a particular case, and the court say "the general law is still subject to the appointment of special trustees. The same power which had a right to change the common law had a perfect right to change the trustees."

This court, in the most recent utterance on that subject, in The United States *v.* Union Pacific Railroad Co., 98 U. S., 568, declares the doctrine in the most emphatic terms. It says:

"The statute-books of the states are full of acts directing the law officers to proceed against corporations. * * Special statutes are also common, ordering suits against such corporations, when they have become insolvent, to wind up their business affairs and to distribute their assets, and prescribing with minuteness the course of procedure which shall be followed and the court in which the suit shall be brought." * * * (P. 605.) "Statutes of this character, if not so frequent as to be called ordinary legislation, are yet frequent enough to justify us in saying that they are well recognized acts of legislative power uniformly sustained by the courts.

"It may be said, and probably with truth, that such statutes, when they have been held to be valid by the courts, do not infringe the substantial rights of property or of contract of the parties affected, but are intended to supply defects of power in the courts, or to give them improved methods of procedure in dealing with existing rights." (606.)

I do not mean to deny the right of this court to entertain a creditor's bill according to the course of a court of chancery; nor do I deny the power of a court of chancery to execute a trust for which no other remedy is provided. What I do deny, is the power to exercise a jurisdiction created by statute, special in its character and provisions, not according to the course of a court of chancery, where it is required to be by a state officer

in a state court. I do deny that this court can execute a trust without the proper party representing the estate or property involved, or by a suit against him when he alone can institute the proceedings, or by a separate proceeding when he is required to institute a general one; or to execute a trust in a chancery proceeding when another remedy is provided by the local law. (9 Pet., 180.)

Power of courts to assess taxes.

The record in these cases shows an attempt to administer in a court of chancery the assets of a dissolved corporation, based on the assumption of the dissolution and abandonment of the corporation, and the failure of all legal remedy by reason thereof. It seeks to reach the assets of the dissolved corporation, and then, upon the assumption that all the persons and property within the limits of the territory which formerly constituted the city are liable to be reached by a direct decree of the court of chancery, seeks the direct imposition of the debt upon the property and persons therein.

The amended bill of Garrett & Sons, at page 20, folio 71, submits "that all the taxable persons and property within the corporate limits are bound for said claims, and this court will take an account and make an assessment sufficient to pay the entire debt upon them and the said property, give judgment speedily, and have the same collected and the debts paid. In a case like this, in order that justice may be done to creditors, the court should do what *the corporation* ought to have done." This bill makes the former mayor and common council parties, but certainly not with a view to require of them any corporate action, or with any view to seek relief against them by mandamus, which the forum—a court of equity—forbids.

The bill of the Ahrens Manufacturing Company only makes parties Fleece, Goodyear, Neely, and Newsom, officials of the city, (p. 32, fol. 123,) and seeks to reach levies already made, only.

The bill of T. E. Brown only makes parties, the city; Flippin, the mayor; Marcus Jones, the president of the board of aldermen; Goodyear, chairman of the common council; Neely,

the treasurer; certain banks, fundholders; Uhl, clerk; Fleece, county trustee; Ben Coleman and J. W. Moores, with no attempt to make parties the governing bodies formerly exercising corporate authority. In this bill, at folio 178, is a clause which is directed only to the property vested in the corporation, not the persons and property of individual citizens. After speaking of the *general assets and property of the city* of Memphis—not the property of the citizen—it proceeds: "After the taxes specially as aforesaid for the payment of plaintiff's said debt have been exhausted, the plaintiff reserves the right to enforce his rights against the said *general assets and property.*"

The next bill, of Rogers *et al.*, makes parties the city and several officers and the heads of the taxing district, (folio 188,) but not the members of the board of aldermen and city council, and makes these charges:

"Since the passage of the said two acts the officers of the city of Memphis, including the mayor and the members of the general council, and all others, have abandoned their positions, and have ceased to perform their respective duties. Practically the said city has ceased to exist as a municipal corporation. No one assumes to represent or act for it, or claims to be charged with that duty. No one is collecting or attempting to collect its past due taxes, or receive the moneys due it, or to control or have the right to control its property of any kind, unless the persons designated by the act last mentioned are doing or attempting to do so. Whether they are or not the plaintiffs do not know." (fol. 231.)

"The said acts of the legislature, and the course pursued by the officers of the city of Memphis in so abandoning its corporate or municipal organization, and in so refusing or failing to perform the duties of their respective offices, and in so relinquishing the trusts reposed in them in respect to the property and assets of the city, and the use and disposition thereof, all as aforesaid, have had the effect of depriving the plaintiffs of any adequate or efficient remedy at law for the collection of the debts due them as aforesaid, and have left them remediable only in a court of chancery, where matters of such a nature are properly cognizable." (fol. 243.)

"The plaintiffs are further advised and believe and submit that not only have they a right to subject the assets and property aforesaid of the city of Memphis to the payment of their debts, but if the same are not sufficient for the payment thereof,

they have the further right to subject all the taxable property within the limits of the city of Memphis to the payment thereof, and to have the orders, decrees, and process of this court to the extent necessary to make such right available, and to enable them to obtain such payment." (fol. 244.)

The amended bill in the consolidated cases makes no effort or attempt to reach the relief through the corporate taxing power, but makes Harden, Hill, and Williams (tax-payers) parties, to reach them individually for past-due taxes, and further, to make them liable for future assessments.

The ninth point of division is, then, to be read in connection with these statements on the pleadings and the relief prayed, and it is simply whether the "court has power to bring in all or any part of the inhabitants and corporators within the limits of said dissolved corporation, by process, and make assessments against them or their property to pay the balance of the entire debt * * * *pro rata*, and render judgments and decrees against each of them for the *pro rata* share or amount found due from said *dissolved corporation*."

Mr. Randolph in his eighth point recognizes the effectual dissolution fully.

So we come to the naked question of the right of this court to levy taxes without an enabling statute, and by virtue of a prohibitory clause in the constitution of the United States against the impairment of the obligation of contracts.

It is not the question of the right to reach the old city—the repeal *non obstante*—on the theory of the repealing law being void. It is not the question of the right to reach the new agent, the taxing district. That is being tried in other suits now pending in Tennessee, which in due time may come in review here. It is the naked question, which the court has so often decided, can the court of chancery assess and collect taxes?

The question was settled by the court in this case of Rees *v.* City of Watertown, 19 Wall., in a "well-considered judgment," as Mr. Justice Miller denominates it in 19 Wall., 661, with a review of the authorities, and, with deference to the opinion of the dissenting judges, upon impregnable grounds. The court avow their reluctance in that case to yield to the irresistible

logic of their own decision, but they yield to duty, when every inclination of their will was to the contrary.

Whatever remedy the complainants may have beyond reaching the existing property and revenues of the corporate body, it is enough for us, in this case, to affirm that it is not by a direct decree against particular persons or property for their debts, and that is the only relief prayed in that behalf. There may be some other. I am not prepared to deny now that there is, but safely we may affirm—with the sanction of this court, and upon the faith that this court will not lightly undo what for such weighty and controlling reasons it has done—that this court will not assume to exercise this power of taxation, nor will it evade that position by unsaying what it has truly affirmed, that this is a question of taxation.

As to this power to reach the property of the tax-payers of the late city, nothing could be more tersely stated or more conclusively negatived than is this proposition, in the words of Mr. Justice Miller, extracted by Cooley in his work on Taxation. In Heine *v.* Levee Commissioners, 19 Wall., 655–661, he says:

"The power we are here asked to exercise is the very delicate one of taxation. This power belongs in this country to the legislative sovereignty, State or National. In the case before us, the National sovereignty has nothing to do with it. The power must be derived from the Legislature of the State. So far as the present case is concerned, the State has delegated the power to the levee commissioners. If that body has ceased to exist, the remedy is in the Legislature, either to assess the tax by special statute, or to vest the power in some other tribunal. It certainly is not vested, as in the exercise of an original jurisdiction, in any Federal court. It is unreasonable to suppose that the Legislature would ever select a Federal court for that purpose. It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by the judiciary of the federal government of the legislative functions of the state government."

Mr. Justice Field, in Hardinburg *v.* Kidd, 10 Cal., 402, says the court "can only exercise powers of a judicial character. The Legislature is incompetent to confer upon the court any

other powers. The assessment of taxes is not a judicial act. It partakes of no element of a judicial character. It is a legislative act. It requires the exercise of legislative power, which * * * cannot be delegated to any branch of the judicial department."

It seems to me that the fallacy of the idea which it is sought in this case to maintain, in the face of the negative of this court, is independent of that conclusive authority demonstrable on general principles. It will be observed that the proposition as stated in the bill (fol. 71) submits that all taxable persons and property within the limits of the late city are liable to contribute to the payment of this debt. Now, I submit that this property is of two kinds, movable and immovable, and the persons might, in a loose way, be designated by a similar qualification of citizens and transient persons. In regard to movable property, the test will be the most obvious, and present the questions so as to strike the inquiring mind and to bring about a true apprehension of the principles involved. Now, I ask, with a view to reach the point at once, upon what principle can it be possible that property can be taxed to pay these debts which, when the city of Memphis existed, had not been created—silks, of which the elements had not yet attained the shape of mulberry-leaves, of which the eggs of the worms were speeding across the continent in transit from China to Italy; cottons, of which the seed was not yet planted, which have been wound, spun, colored, woven, dressed, bought, sold, and transported to the territory occupied by that former municipality since its dissolution? While the city continued its existence, there was a certain legal bond which, by giving corporate continuity, reached those things, which without this fiction of continued life and succession could not be touched. They were here to-day; gone to-morrow on their commercial transit to the ends of the earth. When that bond perished, all that connects the present territory with that perished existence passed away; and the goods that are sold there, that never were in that city of the past, have no more connection legally with that municipality than they had when the artisans of Lyons or Manchester were

weaving their fabrics or imprinting their varied hues. What is the bond which connects the present resident of the city, who has come there since its existence ended to replace the lamented dead who people Elmwood Cemetery, with the obligations of that lamented (by its numerous creditors) municipality? What has that corporation done for him, that he should contribute consolations to the weeping creditors who mourn its loss, which neither religion nor honesty in any form demand of him? He has had no benefit from the old city; he has never received any protection or privilege from her; he gets no license from her. Why shall he contribute to pay her debts? If he came there while that mysterious bond of fictitious continuity existed, the law imposed upon him this obligation. But the bond has perished, and what shall galvanize it into new life? What shall transfuse new blood into it? With that bond, out of which all the duties of the citizen and corporator sprung, perished the duty and obligation. The man who yesterday, by settling within the limits, would become a corporator, to-day comes and goes, and he is not and never was a corporator. He cannot be reached. His movables, which, if yesterday brought within the limits, would have been corporate, to-day are not so. His privilege of merchandizing, or running a bank or a hand-cart, is no longer derived from that corporation, and is no part of its revenue; neither, indeed, can be. His protection is not derived from it, and his personal contributions are not due to it. It seems to me certain as proofs of holy writ, that no such persons and things can be taxed to pay those debts.

Now, in regard to real estate, the physical properties of that certainly do present a degree of natural permanency which seems to give rise to different considerations. At least they render it difficult to apply to it the same tests, in the tangible form in which they naturally come before the mind, as to movables. But this test as to movables suggests, at least, that immovables are subject to some like principle, if not to like proof. It, at least for its protection, looks to a new source, having no legal connection or identity with the corporate city. The liability in law to taxation of real and personal property is the same while the corpo-

ration existed. The physical properties only are different. Why shall the likeness cease when the physical properties of both are unchanged, and the only change which takes place on the dissolution is a legal one, operative alike on each? It cannot be but the same principle is applicable to both.

Now let us take a broader view to reach this. A private corporation is composed of individuals, who impose upon their liability a pecuniary limit generally by the amount of subscribed stock. Beyond this they can never be called to pay. The stock is pledged and becomes a trust fund, to which, by the very nature and constitution of the corporation, creditors may resort. In regard to a municipal corporation, the amount of capital stock is not limited in the same way, nor is the amount of the individual liability of the *stockholder*. But it is not without limitations. Property here to-day, sold to-morow, is subject to no tax next day. Property permanently here is subject to tax under certain modes and in certain fixed proportions. The land tax, under the provision for equal taxation, shall be such a proportion; the personal property such a part; the privilege tax such a part; the personal so much;—all these constitute fundamental parts of the constitution (constituted character) of the fictitious being—corporation—that a city is.

Now, we have shown, by obvious reference to physical properties and facts, that as to a large part of these the constituted character of the corporation only affects them while it exists, and when it perishes that relation is gone. We have said that this suggests the careful examination of the application of the same principle to other property and persons. Now, when by the constitution (constituted character) of this concern and its limitations the joint liability of all these to the burdens of corporate existence, levied in taxes imposed and collected by a fixed authority and in a specified mode, is shown to be a part of its existence, and as to a large part (often the largest part) it is shown that the ligament by which it is bound is wholly dependent on the continued existence of the corporation, are we to conclude that the non-existence can affect one species of property one way and another another way, simply because their physical properties are unlike? That it can affect con-

tinuing and permanent residents one way and transients another? That a change which is legally operative upon one set of persons and one kind of property, is legally inoperative upon another kind of persons and property?

Now, I submit that the whole burden of the obligations of that city cannot be put upon the real estate, as is done by this decree, when by its constituted conditions it was to be distributed among the real property and personalty—between persons resident and transient—between persons and privileges. I am aware that, physically, these relations were never exactly fixed, but were liable to constant fluctuations; but while that is one of the constituted conditions implied, it is not at all implied that a legal destruction of the whole scheme shall be operative to destroy the liability of a large part and not to affect the remainder. When, therefore, this court, in the Watertown case, held that the liability did not exist, it seems to me they did what is commended by sound reason and impregnable authority.

Those jurists who lived nearer the time when these mysterious beings were invented, were unanimous in the opinion that the dissolution of a public corporation devolved its property upon the State. Good faith devolved the duty of its application to proper uses also upon the State. This duty Tennessee has performed in a spirit of justice to creditors, but at the same time in a spirit of indulgence to delinquents, part of her traditionary if not wise policy, but jealously guarding the rights of creditors.

Impairment of contract. Specific operation of constitutional provision.

As the bills here are framed, they raise no question on the contract-impairment clause of the constitution. They are framed upon the idea that the law is effectual, not void. Now, the means by which a constitutional restriction upon legislative power operates is negative. The courts have no mission to execute actively clauses of the constitution affecting legislation. They cannot, as our court says in Ford *v.* Commissioners of Hancock Co., 8 Hum., 160, compel action; they cannot prohibit action. The specific mode in which they act is, when a legis-

lative act comes before them for enforcement, to decide whether it is law; and if it comes within a constitutional prohibition, to hold that it is not law. Now, if these complainants were here on a proper bill for that purpose, they might ask the court to decide that question. But when they assume the validity of the law and the effectual operation of it, and file a bill on that basis to carry out its consequences, they cannot, in the same proceeding, have relief that is wholly inconsistent with the whole theory of their bills.

The specific mode in which courts act in regard to constitutional questions hardly requires illustration, but, as a mere reminder and starting-point, may well bear a single one. If a remedy is given by law in the courts of a state, as to enforce a contract, it cannot be taken away. A law to that effect would be ineffectual, because inconsistent with the constitution; and so the jurisdiction under the void repealing law would remain in force. But suppose a new system of courts should, for great public reasons, be substituted for the old one, and this point of jurisdiction should simply be omitted. When the effort was made to clothe such courts with a jurisdiction they never had, by what process could such a restrictive negative provision operate to clothe with ungranted powers a new jurisdiction? You can say we can hold that enactment which conflicts with the constitution void, but we cannot supply, to one which fails to comply with it, legislative provisions which the legislature has failed to make. Suppose the legislature of Tennessee had never provided any means of discouraging lotteries, as required by the constitution, could the courts supply the legislation? Yet if, once having supplied the means, they should repeal the law without supplying another mode, the courts might possibly hold the repeal void. But to test the question. Now, suppose the means provided were dependent wholly upon a special officer, who was to institute all proceedings; suppose, now, they abolish that office: could the courts declare that the prosecuting officers of the state were, by virtue of the negation in the constitution, vested with a new power which the constitution did not confer and for which no legislation ever provided?

Mr. Randolph cites the case of Liquidators *v.* Municipality, 6 La. Ann., 21, that the legislature cannot change the agreed

depository of a sinking fund. Now, suppose no provision was made for the filling of any vacancy in that board, and the legislature were to enact that none should be filled: could the courts of the United States appoint them by virtue of any authority in them vested by the constitution? How would such a commission run?

This brings us back to the main proposition. It is supposed here, that, by reason of the fact that the Legislature of Tennessee has destroyed the agencies through which the complainants' rights were to be worked out, which destruction it is the whole theory and basis of the bills is effectively accomplished—*fait accompli*—a series of results follow:

1st. That legislative functions vested in that destroyed body are transferred, not destroyed.

2d. That they are transferred by negative and restrictive provisions, operating not on the destroyed body, the city, but on the destroyer, the legislature.

3d. That they are conferred not upon any certain and fixed body of officers, but, as time or chance may determine, upon any court which may obtain jurisdiction of a cause.

4th. That they are conferred upon the courts of a government that is incapable of conferring the power originally on any body or person whatever.

5th. That they are conferred upon a body upon whom no act of the original creating power (the legislature of Tennessee) could confer anything, they being inherently incapable of receiving any grant of power from an alien source.

6th. That they are conferred upon a body incapable by their constituted character—a judicial body—of exercising legislative functions. And

7th. That they are concurrently conferred upon like bodies within the State incapable by their constituted character of receiving such grant.

It would seem that to attribute such results to an active provision would be straining its effective force to the limit—give it ample scope and verge enough. But to give them to a mere negation, is surely what this court uncommitted would not do; what assuredly they will not overrule well-considered cases to do.

J. B. Heiskell.

It is pointed out by a distinguished and discriminating judge that the fallacy of employing ambiguous words is often a source of error in legal proceedings. In regard to this question of the interest of these creditors in the charter of the city of Memphis, perhaps the solution lies right here. The creditors' counsel use the words "right and power" so as to confuse two very distinct matters. The city of Memphis was clothed with certain *powers—political powers*—as a municipal corporation. These were by the state delegated to her. There was no contract made by the city with the legislature that these powers should not be resumed. On the contrary, Mr. Story says that it is one of the implied conditions of every such grant that it is resumable at pleasure. One of my colleagues has advanced and successfully maintained the thesis that no contract of one legislature can take away or abrogate this power of resumption. The city could not by stipulation secure this power in perpetuity. Now, the proposition is that the power that the city cannot secure to herself by solemn stipulation with the legislature, her creditors may have perpetuated by virtue of the contract-impairment clause in the constitution of the United States. That is to say, they have a vested interest in the political powers of a municipality. Is it a lien upon the power, or a property in the power? A *jus ad rem*, or a *jus in re?* Whatever it is, it is, according to their view, a right in them to a power in the city by means of which that which is essentially resumable at the discretion of the legislature becomes perpetual;—that which by direct contract stipulation with the principal cannot be perpetuated, by contract with the agent becomes irresumable.

The state might have great public works in progress and contractors engaged in their construction; these contractors might have sub-contractors engaged on contracts of the most obligatory nature. Suppose the state discontinues the work and the contractors are thereby rendered unable to comply with their contract and make their payments, the obligations of the sub-contractors are not thereby impaired. The means of fulfilling the contracts may be taken away. If the contractors were able to pay independent of the means the state was to furnish, they would remain liable. If they lost at the gaming

table the means the state paid them, the contract would be affected and impaired in the same way that it is by withholding the means of payment.

If a man gives credit to a lottery agent because he is making $300 a month by his business, the obligation of his contracts are not impaired if the state makes it a felony to sell a lottery ticket and so suppresses the debtor. The argument would be the same as here: That the contract had been impaired by the passage of the law by means whereof the said debtor had been rendered less able (*quo minus*) to pay the said debt according to his said contract, whereby the said plaintiff is wholly deprived of the benefit of his said contract and of his remedies for the redress of the said several failures and refusals of the said defendant to pay the said sums of money, &c.

Taxing District not here.

On page 71 of Mr. Randolph's brief he attempts to bring before the court the new government of the taxing district of Memphis. After what occurred in the court below, I must own that I can but view with surprise this attempt to inject this question into this case here. When the case was mentioned in the court below the attorney for the district commissioners called upon the counsel to know if any relief or decision was claimed or asked against his corporation, and was distinctly answered in the negative; whereupon he stated that he would take no part in the proceedings, and upon that understanding he has since taken no steps in that behalf. After this explicit disavowal of the intention in this case to make the question, Mr. Randolph instituted an independent proceeding by mandamus, in the circuit court of Shelby county, to compel the commissioners of the taxing district to levy taxes with a view to try this question, and that case is being regularly contested there.

But this is not simply a matter of agreement. No such question was raised on the trial below as before stated, and no division is certified upon any such question. No decree is asked or given against the commissioners from which they could appeal, and no exception is taken by the complainants to the

failure of the court to give them such a decree, nor is any appeal taken by them from anything which the court does or fails to do. The commissioners are not here in any shape, and any action which the court might take to their prejudice would be contrary to every principle of fairness and of judicial decision. Let us try that case only when the proper parties are brought before the court, and when those that are interested in it can present their defenses in their own way and upon their own judgment. They are not here now, nor are they represented by us who are present.

This court will not on a certificate of division decide an abstract question. By which is meant a question not made by the pleadings, or one not arising upon the facts. (Phillips Pr., 382–385; 10 Pet., 57; 3 Wall., 294.)

Nor will they answer a question not stated. (10 Pet., 57.)

It is said the commissioners have been held to be the successor of the city. In some sense the district is the successor of the city. In the sense that it follows the other, it is its successor. In the sense of legal representation, it is in nowise true. The successor, and the only successor of the city, is Minor Meriwether.

When the principal resumes the control of what he has committed to the agent, the process is hardly within the legal idea of succession. If by that merely is meant following in time, then I have no exception to take to the phrase.

The powers of government have been resumed by the state, and that process of reversion cannot properly be denominated succession. Part of the governmental powers have been committed by the same principal, the state, to the new government, not by way of derivation, but by original grant, and without any regard to similarity or identity of powers. Part have been retained and withheld by the state. If this be succession, then the succession is threefold: That of Minor Meriwether, to the rights of administration; that of the commissioners, to the governing powers, such as are committed to it; and that of the state, to the taxing power and other governing powers retained.

Jurisdiction of U. S. courts.

In my view of this case on page 3 of this brief, an important aspect of the first bill filed in this litigation is overlooked.

The bill of Garrett and others, claiming to be under the act of March 19, 1877, is subject to a very grave objection in addition to those stated to the bills in general.

The act of 1877 attempts to confer on the chancery court, under an authority reserved to the legislature in our state constitution to give to courts of justice power over local and private affairs, the power in a certain event to supersede the governing agencies of a municipal corporation and itself govern the city, and so to exercise functions political, not judicial. Whether this was within the proper construction of that clause of the state constitution, has never been judicially determined and is matter of grave doubt; but, for the purpose of this argument, I assume that they had the right to do what they attempted. On this assumption these political powers would be properly granted to the state court. But the courts of the United States are capable of only judicial, not executive or political functions, and they could not exercise powers which could only be accepted by a state court in virtue of this exceptional grant of extra-judicial powers. Congress could not confer such powers on the courts of the United States.

But this bill seeks not only to give jurisdiction to a U. S. court, but to do it without the parties, and not for the purposes for which the state court was clothed with that power.

It ignores the commissioners who were to be appointed under that act and the purpose of securing a compromise of the debt at a maximum of 55 cents on the dollar.

This bill is therefore *coram non judice*, and the answer as to the jurisdiction to entertain this bill must be in the negative. The question as to this bill is simply whether a U. S. court can take jurisdiction to govern a municipal corporation of a state because, under exceptional powers in a state constitution, a state court may do so? And may all this be done because A, B, and C ask it as non-resident creditors?

This original bill gives no hold to the court as a pending

suit. It was a pending nullity. The act was wholly repealed by the act of 1879. If an appointment of a receiver and commissioners had been asked for and made before the repeal of this act and the others chartering the city, no jurisdiction would attach which could support suits brought afterwards. No such support could have been found in a proper proceeding in a proper court. The repeal which struck down the city, struck down the power of the courts to supersede what was dead and superseded by another state agency.

In other respects, as stated on page 3, the second and third questions are similar.

These suits cannot be maintained under the code of Tennessee. Several sections are cited and quoted from different portions of the code, but they are all to be read and construed together. None of them have any application to a corporation abolished by statute, or to a municipal corporation. If they had, they are repealed as to such cases by the act of 1879.

But it is sufficient to say that these bills are not filed under the code. The third part of the code prescribes the modes of procedure, and the second title treats of special actions and proceedings. The eighth chapter provides the mode of proceeding against corporations and officers in certain cases. This proceeding is to be in the name of the state, and is to be brought by the attorney-general for the district, when properly directed. (3409, 3412.) It may, without such direction, be brought by him on the relation of a private individual. (3413.)

Sections 3425 and 3426 are parts of the same chapter, and 3431 is not only part of it, but it prescribes that the bill authorized there is to be filed under the provisions of *this chapter*,—that is, in the form there prescribed, *i. e.*, in the name of the state.

So much is found in the part of the code devoted to procedure.

When it treats of the jurisdiction of the chancery court, it declares its jurisdiction of a suit by creditors to attach the property of a corporation,—not a dissolved corporation, but where the corporate franchises are not used or have been *granted* to others (3431 says *assigned* to others) in whole or in part. (4294.)

Section 4295 provides for application of the funds to creditors and *stockholders*, showing clearly what kind of corporations are intended by the law.

Section 1492 of the code further shows the scope of these provisions. That is found in part 1, tit. 9, of which c. 1 treats of municipal corporations; c. 2, of private corporations. Chapter 1 contains no provision for any proceeding to forfeit the charter of a municipality. Chapter 2 contains section 1492. The article in which it is found commences with the heading, "General provisions in relation to *private corporations*." Its enacting clause is, "every *private corporation* has power." (1474.)

Section 1492 reads: "Whenever powers, &c., have *so* been granted and are not used, or are assigned to others, * * * *such* corporation shall not be dissolved, unless all the corporate property has been appropriated to the payment of its debts."

Section 1493 provides for all *such* corporations whose charters expire, &c.

Section 1494: "Upon the dissolution of any *such* corporation, the managers of the business * * are trustees of its *stockholders* and creditors, unless other persons are appointed *by the general assembly* or by a court." * * *

Section 3000, under Procedure, c. 13 "of executions," provides for a distringas against corporations, and for a receiver to collect *choses in action*.

The supreme court of Tennessee, in a case upon the construction of an important section of the code, held that these headings were parts of the code, and were to have controlling force in their construction.

Supreme Court of the United States.

OCTOBER TERM, 1879.—No. 916.

MINOR MERIWETHER, RECEIVER OF THE CITY OF MEMPHIS, &C.,

vs.

ROBERT GARRETT & SONS AND OTHERS.

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Robert Clarke & Co., Printers, Cincinnati, O. [*November*, 1879.

Supreme Court of the United States

OCTOBER TERM, 1879.

Minor Meriwether, Receiver of the City of Memphis, and others,

Appellants,

No. 916.] *vs.*

Robert Garrett & Sons, and others,

Appellees.

APPEAL FROM CIRCUIT COURT OF UNITED STATES FOR WESTERN DISTRICT OF TENNESSEE.

IN EQUITY.

Statement of Case and Brief for Appellees, Creditors of the City of Memphis.

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The appellees are creditors of the city of Memphis. Most of them have judgments or suits pending in the Circuit Court of the United States for the District of West Tennessee, for the debts due them. Executions have been issued on the judgments, and those executions have been returned that the city has no property on which to levy.

Many of the creditors have had taxes levied under writs of *mandamus* from the Circuit Court of the United

States, and some under like writs from the Circuit Court of the State, to pay their particular judgments or debts. Large amounts of such taxes remain uncollected. In addition, large amounts of taxes levied by the city of Memphis, extending through a period of many years, for general purposes, under the power contained in section 1, article 4, of the act of 13th February, 1854 (Acts of 1853, 1854, ch. 195, p. 291), copied below, or a similar power contained in subsequent acts, were uncollected. Among the taxes, portions of which so remained unpaid, was a tax to pay the interest on the bonds of the city, levied under the power contained in the same section, or a similar power contained in subsequent acts. There were also sink-ink fund taxes levied to retire the bonds of the city as they matured. There was also a tax levied, a part of which remained unpaid, under the act of 24th March, 1873 (Acts of 1873, ch. 67, p. 102), for the purpose of reimbursing those who paid the cost of the Nicholson and stone pavements by the front foot.

Among the creditors who have had taxes levied under writs of *mandamus* is T. E. Brown, whose case is so well known to the Court it need not be stated. Its history may be seen in part by reference to *Memphis* v. *Brown*, 20 Wallace, 289, and *Memphis* v. *United States*, 97 U. S. 293, and by his bill, to be found in this record, p. 39–45.

Hopkins Loudon has a specific claim on the taxes for 1876, growing out of the facts stated in his bill and amended and supplemental bills in this record, p. 22–32.

The bills of Robert Garrett & Sons and others (Record, p. 1–22), and Fairman Rogers and others (Record, p. 46–58), and the amended and supplemental bills in the consolidated causes (Record, p. 74–89), are filed by judgment and other creditors on behalf of all the creditors, and

state the grounds on which it is sought to support the suits.

The debts represented have been created at various times during the last thirty or forty years, under powers granted the city of Memphis by special acts of the legislature of the State of Tennessee. Some of them represent bonds, which, after running their currency—say five, ten, fifteen, twenty, or thirty years—have matured. Some are for pavements put down in the streets of the city, as the debts of T. E. Brown and the large judgment of James A. Loudon and the judgment of Hopkins Loudon. Most of the debts are for interest which has accrued on the bonds of the city, and which the city has failed to pay as it matured. The city has not levied voluntarily any tax to pay interest on its bonds since the year 1874, and then the tax it levied was wholly inadequate for the purpose. It has not levied any tax sufficient to pay the interest on its bonds since the year 1873. Indeed, it is believed it has made no *voluntary levy* of taxes to pay *any debt whatever* since the year 1874—certainly none of any importance. Its policy ever since January, 1874, has been to refuse to pay any thing, or to make any effort to pay any thing, unless forced to do so. Its people have been made to believe they are unable to pay what they owe, and that it is useless to try. They have been advised their relief is in legislation and litigation, and that ultimately, from one or both these sources, their deliverance will come.

By chapter 10, Acts of 1879, the legislature of the State of Tennessee abolished Memphis as a municipal corporation (p. 13–15).

The same day it reorganized the same territory and people into a local government, called a taxing district. Acts of 1879, ch. 11, p. 15–30.

The theory of the abolition of the city seems to have

been that thereby the creditors would be disabled from compelling payment of their debts through the Courts.

The new government, it was expressly provided by the act creating it, should not be liable for, and should not impose any taxes to pay the debts of the city.

And the powers of taxation before vested in the city were "withdrawn and reserved to the legislature."

At the same time, by the act reorganizing the new government, all the taxes due the city, and all other indebtedness to it, were vested in and became the property of the State, to be disposed of for the settlement of the debts of the city, as should be thereafter provided by law.

It was claimed this disposition included the taxes levied to pay specified debts, as well as the others.

The city's officers, on the passage of the two acts of the legislature referred to, vacated their positions, and ceased performing their functions, and the appointees under the act reorganizing the new government qualified and entered on their offices, and the taxing district took the place of the city.

Thereupon these bills were filed.

The Circuit Court considered them properly filed, consolidated them, and appointed a receiver, according to their several prayers. (Record, p. 63–67.)

Demurrers were filed to them. (Record, p. 100–106.)

Orders *pro confesso* were entered as to the defendants, who did not demur. (Record, p. 97.)

The causes were heard on the demurrers, and the demurrers were overruled. The defendants elected to stand on their demurrers, and the Court pronounced a final decree, in accordance with the bills. The points of the decree are:

(1.) The creditors are entitled to recover their debts,

the amounts of which will be hereafter ascertained and fixed by the Court.

(2.) That all the assets and property of the city of Memphis, including taxes unpaid, be applied to the payment of the debts.

(3.) The receiver is directed to proceed to collect the assets, including the taxes, as directed by the order appointing him.

(4.) Meriwether, who has been appointed by the Governor of Tennessee to collect the unpaid taxes due the city of Memphis, under the act of the 13th March, 1879 (Acts of 1879, ch. 92, p. 127), since the bringing of these suits, and has been made a defendant by the amended and supplemental bills, is perpetually enjoined from interfering with the assets, property, etc., in the hands of the receiver appointed by the Circuit Court.

(5.) The Court reserves the priorities of creditors, and their rights to the several funds, to be disposed of as the questions arise.

(6.) The Court decrees that all the property within the limits of the territory of the city of Memphis is liable, and may be subjected to the payment of all the debts the city of Memphis owes the creditors suing, and that such liability shall be enforced from time to time, in such manner as the Court may order in the suits.

(7.) The Court pronounces personal decrees against Hardin, Hill and Williams, three tax-debtors who had been brought before the Court by the amended and supplemental bills, in favor of the receiver, for the amounts of taxes they respectively owe, and awards personal executions, and reserves the right to enforce all liens for the taxes against all property liable thereto. (Record, p. 109–111.)

An appeal was prayed by the defendants, and granted. (Record, p. 111.)

And at the request of the defendants, certain questions are certified to this Court, under the provisions of the act of Congress, of 29 April, 1802, as modified by the act of 1st June, 1872, for answer.

The questions are in the record, pages 97–99 and 106–109.

In order that the Court may have the legislation with reference to Memphis before it, without the trouble of looking up all the acts, I have prepared a synopsis of the acts, so far as I deem them of importance in these suits, and have made references to the others.

Legislation in reference to the city.

The first act of the legislature of the State of Tennessee, having reference to Memphis, was passed on the 26th day of December, 1826. (Acts of the year 1826 [private], ch. 145, p. 126.) It is entitled "an act to incorporate the town of Memphis, in Shelby county." It declared, "that the town of Memphis, in the county of Shelby, and *the inhabitants thereof*, are hereby constituted a body corporate and politic, by the style and name of 'the mayor and aldermen of the town of Memphis,' *and shall have perpetual succession by their corporate name.*" After specific grants of power, the corporation was given the general power "to do all things necessary to be done by corporations."

An organization under the act was effected, and from that time till now there has existed a municipal government over the territory and people first incorporated. Other territory has subsequently been added.

The next act was passed on the 1st December, 1829 (Acts of 1829–1830 [private], ch. 93, p. 77), and conferred upon the town of Memphis "all the corporate rights, privileges, and capacities" given by any law to the corporation

of Nashville. And see sec. 3, ch. 133, of the acts of 1829–1830 [private], p. 103.

The next act was passed on the 19th October, 1832 (Acts of 1832 [private], ch. 67, p. 53), and extended the limits of the town of Memphis.

The next act was that of 28th November, 1833 (Acts of 1833 [private], ch. 239, p. 129, sec. 1), which also merely extended the limits of the town.

The next act, in the order of date, was that of 20th February, 1836 (Acts of 1835–1836 [private], ch. 9, p. 81, 82, beginning at section 17). It repeated the incorporation of the mayor and aldermen; authorized a mayor's court; the erection of a court-house and jail, and the appointment of a jailer; extended the corporate limits of the town; empowered the mayor and aldermen to pledge the faith and revenue of the corporation of the town for the purpose of borrowing money, not to exceed twelve thousand dollars, to construct their public works; and to make such by-laws as would enable them to cause the tax on property to be collected.

The next act was that of 31st January, 1840 (Acts of 1839–1840, ch. 145, p. 248), by which the town and the inhabitants thereof were incorporated to be known as the mayor and aldermen of the city of Memphis, with the same regulations, restrictions, provisions, privileges, and capacities extended by the existing acts of incorporation to Nashville, provided the qualified voters of Memphis, at an election provided for, voted to accept the act.

The next act was that of 3d February, 1842 (Acts of 1841–1842, ch. 188, p. 224), by which the town was divided into wards; the election of aldermen was provided for, as well as that of mayor; a town constable was created; and the limits of the town were extended.

The next act was passed on 7th December, 1843 (Acts

of 1843–1844, ch. 26, p. 27). Amongst other things, it gave the mayor and aldermen power to pass by-laws providing for the levying and collecting of taxes for all purposes within the scope of their powers, and the collector of taxes appointed within the corporation the same authority to collect said taxes, and the same remedies as the collector for the State and county taxes shall have by law for the collection of State and county taxes.

There was then an act, passed 6th January, 1845, "to incorporate South Memphis." Acts of 1845–1846, ch. 56, p. 109. It declared that the town of South Memphis, *and the inhabitants thereof*, were constituted a body politic and corporate by the name of the mayor and aldermen of South Memphis, and should have perpetual succession. The powers granted were specially enumerated, and were such as are usually possessed by similar corporations. The boundaries were prescribed, and embraced territory adjacent to and south of the town of Memphis.

The next act was passed on the 21st January, 1848 (Acts of 1847–1848, ch. 64, p. 114), and is entitled "an act to reduce the several acts incorporating the town of Memphis into one act, and to amend the same." It declared that the district of country described was "thereby created into a city by the name of the city of Memphis." It then enacted *that the inhabitants of the said city of Memphis* were thereby constituted a corporation and body politic by the name and style of the mayor and aldermen of the city of Memphis, and by the same name should have succession for ninety-nine years. After specifying certain powers, it declared the corporation might "do all other acts touching the same as natural persons." Other powers were then enumerated, not deemed of importance here, which may be seen by reference to section 7 of the act.

The act of February 4, 1848 (Acts 1847–1848, ch. 166, p. 265), curtailed the limits of South Memphis.

The next act was passed on the 3d December, 1849, and is entitled "an act to incorporate into one act the several acts incorporating the city of Memphis and the town of South Memphis, passed January 6, 1846, and January 21, 1848, and to unite the said towns into one, and extend the boundaries thereof." Acts of 1849–1850, ch. 6, p. 7.

The district of country, formerly the city of Memphis and the town of South Memphis and the additions, was united into one city by the name of the city of Memphis. *The inhabitants of the city* were thereby constituted one corporation and body politic by the name and style of the mayor and aldermen of the city of Memphis, and are declared to have succession for ninety-nine years. The powers of the corporation were enumerated with great particularity, and were very extensive. The special power was conferred to subscribe for five hundred thousand dollars of the capital stock of the Memphis and Charleston Railroad Company, and to issue bonds for the payment of such subscription having not more than thirty years to run, and bearing interest not greater than six *per centum per annum*. See section 10 of the act.

The act of 28th January, 1852 (Acts of 1851–1852, ch. 124, sec. 6, p. 175), and the act of 16th February, 1852 (Acts of 1851–1852, ch. 346, secs. 8, 9, p. 633), extended the city's powers of taxation.

The act of 5th December, 1853 (Acts of 1853–1854, ch. 7, p. 34), specially ratified the subscription for stock by the city in the Mississippi and Tennessee Railroad Company, and authorized the city to issue its bonds and subscribe the same as stock in the road.

The next act, which is very elaborate, and is entitled "an act to amend the charter of Memphis," was passed on

the 13th February, 1854. Acts of 1853–1854, ch. 195, p. 285.

This act first united a described district of country, and enacted it into one city by the name of the city of Memphis, and then declared that the inhabitants of the city of Memphis were constituted a corporation and a body politic by the name and style of the mayor and aldermen of the city of Memphis, and by that name should have perpetual succession. Many corporate powers were then specifically granted, and there was added, "and may do and perform all other acts as natural persons." Sec. 1, art. 2, of the act, p. 285.

Among the powers expressly granted was "to lay and collect taxes *for the purpose of defraying the expenses necessarily incurred in administering the affairs of the city;* but the tax imposed for *that purpose* should never exceed one per cent., or one dollar on every one hundred dollar's worth of property within the city limits liable to taxation and valued at cash prices." Sec. 1, art. 4, of the act, p. 291.

There was also in the same section the power "to lay and collect a special tax for the sole and special purpose of paying the interest, as the same might become due, on the bonds authorized to be issued by the second section of the same article of the act, for the purpose of funding and paying off the present due debt of the city." As to this power, it was provided: "Said tax shall not be greater than may be necessary for the purpose; a separate account thereof shall be kept, and the money received under it *shall not be applied to any other purpose whatever;* and it is hereby made the duty of each and every board of mayor and aldermen, immediately after organization as such, to adopt an ordinance imposing said special tax; *and until such ordinance shall be passed and approved,* no other ordinance or legislative act which they may transact shall be

lawful or binding, or have any legal force or effect whatsoever."

The same section then declared further:

"The board of mayor and aldermen shall also have power, *provided* the dividend arising from the railroad or railroads in which the city may hold stock shall not be sufficient to meet the interest annually accruing on the bonds issued to said railroad, to lay and collect such additional tax as shall be necessary to pay the difference between said dividends on stock and the interest on bonds issued to said railroads."

The bonds authorized to be issued by the second section of the article were "bonds of the city, having not less than thirty years to run, and bearing not more than six per cent. per annum, for the purpose of funding any or all of the present due debt of the city or that not yet due, but for which city bonds may have been issued." Also, "upon like terms as to time and rate of interest, . . the bonds of the city to the Memphis and Little Rock Railroad Company, or to any railroad companies in which the city has taken stock; said bonds to be delivered up to said companies only when they shall have complied with the conditions that may have been stipulated by the board of mayor and aldermen at the time of subscription, or as subsequently modified by said board."

The third section provided: "They may also, upon like terms as to time and rate of interest, issue the bonds of the city for the purpose of aiding the construction of these or any other railroads leading into or near Memphis," upon certain conditions which the section proceeded to set out.

There was then a *proviso* that "the mayor and aldermen may issue to the Nashville and Memphis Railroad Company, commonly known as the Memphis and Louis-

ville Railroad Company, for the purpose of ironing and equipping it, the bonds of the city upon the terms specified above as to time and rate of interest, if the city shall take stock in the same."

See section 3, article 4, of the act, p. 292.

Section 8 of the miscellaneous provisions in the act declared:

"All the time bonds heretofore issued by the mayor and aldermen of the city of Memphis, for the purpose of borrowing money, are hereby declared legal and binding, any provisions of any law or ordinance to the contrary notwithstanding." P. 301.

By section 10 of the act of 21st February, 1856 (Acts of 1855–1856, ch. 120, p. 146), the State of Tennessee guarantied the payment of three hundred and fifty thousand dollars of bonds issued or to be issued by the city of Memphis to the Memphis and Little Rock Railroad Company in payment for stock subscribed for by the city in the railroad company.

The next act in order was that of 29th February, 1856 (Acts of 1855–1856, ch. 263, p. 530), beginning at section 7. It amended the charter of the city in several particulars:

Section 10 declared "the board of mayor and aldermen shall set aside semi-annually, in the months of January and July of each year, a sum not less than five thousand dollars, to be called the 'Memphis Sinking Fund,' which shall be exclusively applied to the purpose of retiring any of the bonds of the city of Memphis: *Provided, however*, the said board of mayor and aldermen shall and may determine at what time this act shall take effect."

The next act was that of 29th February, 1856 (Acts of 1855–1856, ch. 154, p. 238). It has reference only to the Memphis Hospital.

The next act was that of 6th February, 1858 (Acts of

1857–1858 [private], ch. 50, p. 111), which merely extended the jurisdiction of the city recorder and regulated his fees. See sec. 19.

The next act was that of 20th February, 1858 (Acts of 1857–1858 [private], ch. 74, sec. 6, p. 161), which merely repealed section 12 of the act of 3d December, 1849.

The next act was that of 24th February, 1858 (Acts of 1857–1858 [private], ch. 80, secs. 7, 8, p. 184, 185), which provided for two additional wards in the city and regulated the compensation of aldermen.

The next act was that of 19th March, 1858 (Acts of 1857–1858 [private], ch. 149, p. 358, sec. 18), which had reference only to the right to vote in municipal elections, *authorizing citizens to do so, whether they had paid their corporate and poll-tax or not.*

The next act was that of 20th March, 1858 (Acts of 1857–1858 [private], ch. 159, sec. 21, p. 380), which had reference only to the polling-places at elections, and the closing and change of location of streets an alleys.

The next act was that of 20th February, 1860 (Acts of 1859–1860 [private], ch. 70, p. 279, secs. 1–10). This act gave the city power to issue bonds for the following purposes: (1.) To an amount not exceeding $500,000, for the purpose of erecting permanent water-works; (2.) To an amount not exceeding $500,000, for the construction and pavement of the principal streets and wharves, or either; (3.) To an amount not exceeding $400,000, to aid in the construction of a railroad between Memphis and St. Louis; (4.) To an amount not exceeding two hundred and fifty thousand dollars, to aid in the completion of the Mississippi and Tennessee Railroad; (5.) To an amount not exceeding $250,000, to aid in the completion of the Memphis and Ohio Railroad, and to the same amount for the Memphis and Little Rock Railroad; and, (6.) To an amount not ex-

ceeding $250,000, for the purpose of funding all or any of the then due debt of the city, or that not then due, but for which the city bonds had been issued.

It was provided in the same section of the act that no such bonds as were authorized for the first, second, third, and sixth classes should be issued until and unless the board of mayor and aldermen first, before such issue, should provide by ordinance for the regular and prompt payment of the annual interest on such bonds, and also provide an annual sinking fund to commence at least within six years after the issue of the bonds, and sufficient in amount to retire or redeem the same by maturity. Sec. 3, p. 280, 281.

There were provisions for the assessment of property for taxation and for the collection of taxes. (Secs. 5, 6, p. 282.) Also for the construction of permanent streets in part by taxation of the abutting property by the front foot, the same in principle as the act of 1866, afterwards held unconstitutional by the State Supreme Court, in *Taylor* v. *Chandler*, 9 Heiskell, 349, referred to by this Court in *Memphis* v. *Brown*, 20 Wallace, 290. Sec. 7, p. 282, 283.

The next act was that of 29th February, 1860 (Acts of 1859–1860 [private], ch. 90, pp. 26, 27), beginning at sec. 26. Its provisions are not material to be repeated.

The next act was that of 24th March, 1860 (Acts of 1859–1860 [private], ch. 206, sec. 9, p. 592). Its provisions are not important here.

The next act was that of 24th November, 1866 (Acts of 1866–1867 [private], ch. 8, p. 14, secs. 1–7). It declared: "The inhabitants of the city of Memphis are hereby constituted a corporation and a body politic, by the name and style of 'the city of Memphis,' and by that name shall have perpetual sucession." Sec. 1.

Many powers were then expressly conferred; among

them the power, "for the purpose of making any public improvement that might be deemed necessary for the city, or of acquiring any property for the public use of the city; to issue the bonds of the city, bearing interest not to exceed eight *per centum per annum*, and having not more than thirty years to run." See sub-section 2, sec. 3. p. 16, 17.

There was also power to "subscribe any amount of stock they might think proper to any railroad within the State of Tennessee which, in their opinion, would contribute to the material wealth of the city, and to issue bonds to pay for such subscriptions, for such length of time, and upon such terms and conditions, as they might deem proper." Sub-section 14, sec. 3, p. 18, 19.

The power to require the entire cost of grading, paving, repaving, and repairing the streets to be borne by the owners of the adjoining property, the same authorizing the contracts for the work done by T. E. Brown, one of the plaintiffs in these suits, who has a judgment in the record for the balance due him under such contracts, was conferred by sec. 4, p. 19, 20.

Provision was made for the collection of the price of the real estate sold for taxes, and for the city becoming the purchaser, where no one else would bid the amount due, and for the execution of a certificate of purchase to the city, where it became the purchaser, and for the city to obtain possession of the property it purchased. Sec. 6, p. 21, 22.

The next act was that of 3d December, 1867 (Acts of 1867–1868 [private], ch. 36, p. 65).

The first section extended the boundaries of the city. The second divided into wards the territory added by the act, and provided for the election of aldermen from them. The third section repealed the provision requiring the reg-

istration of voters, in the act of 24th November, 1866. And the fourth section was as follows:

"That the board of mayor and aldermen, for the purposes of funding the debt of the city, shall have power to issue the bonds of the city, bearing interest at the rate of six per cent. per annum, and having not more than thirty years to run; but this authority shall not be exercised, unless the ordinance authorizing the same shall first be submitted to a vote of the qualified voters of the city, at an election to be held for that purpose, and after giving ten days' notice of the time and place of election, in the daily newspapers of the city; and if a majority of all those voting shall decide against the proposition, then the bonds shall not be issued." p. 66.

The next act was that of 9th March, 1868 (Acts of 1867–1868 [private], ch. 85, p. 188), which had reference merely to the registration of voters, and the conduct of elections.

The next act was that of the 14th March, 1868 (Acts of 1867–1868 [private], ch. 102, p. 246), beginning at sec. 2.

This act first made the State and county annual assessment of property for taxation, within the city limits, the assessment of the city of Memphis for the corresponding year. Upon receipt of a copy of such assessment, which was required to be sent the mayor, who was to lay it before the board of aldermen, "the said board was to proceed to fix the percentage of the tax to be collected thereon for corporate purposes." Steps were then to be taken to allow corrections of erroneous valuations. The collector was then required to pay over the same funds he collected, Monday of each week. Provision was then made for the city to pay for the copies furnished it, and a ratable part of the cost of the assessment. It was declared what should be a sufficient description of real estate sold for taxes. City

taxes were made due the same time that State and county taxes were, "and the same powers, penalties, and provisions, then or thereafter existing, for and concerning the collection of State and county taxes, were made applicable also to the collection of city taxes; and the same should be applied by the authorities and officers of the city as fully as by those of the State and county; and the same rights should obtain thereunder; and these provisions should apply to the taxes unpaid as well as to those thereafter to be levied." p. 247, 248.

Section 5 was as follows:

"The said board, at the beginning of each corporate year, shall levy a special tax to pay the interest on the bonds of the city, of whatever description, which tax shall be collected in money, and held for the sole purpose of paying the said interest; and said interest shall be paid in equal parts, semi-annually, payable on the 25th days of May and November; and if not paid within thirty days from either date, then a penalty of five per cent. shall be imposed on the amount of taxes due for said interest; and the property on which said interest tax is levied shall also be subject to the same powers, penalties, and provisions of law, now and hereafter existing, for the collection of State and county taxes." p. 248.

The next act was that of 23d January, 1869 (Acts of 1868–1869 [private], ch. 28, p. 135), which provided for the condemnation of lands for unpaid city taxes; for new voting places in the city; for the repeal of the provision providing for the removal of city officers; for the right of all officers of the city to hire or appoint all men in their respective departments; and for the letting by the chiefs of each department of all contracts for work in their departments.

By ch. 30 (Acts of 1868–1869 [private], p. 137), the

Memphis city schools were incorporated, and section 9 of the act authorized and required the mayor and board of aldermen of the city of Memphis to levy and collect a tax for their support. The board of education was given power to purchase lots and erect school buildings, provided the cost should not exceed fifty thousand dollars per annum, for ten years, unless authorized to exceed that sum by a vote of the citizens. The mayor and board of aldermen of Memphis were required to make immediate provision for the payment of the cost of the lots and buildings, to do which they were given power to levy a special tax upon such property as was taxed for other city purposes, for the whole or any part of the required amount. And the better to enable them to provide such means promptly, and lessen the burden of immediate taxation, they were given the discretion to issue bonds of the city, not to exceed in all five hundred thousand dollars, having not more than thirty years to run, bearing six per cent. interest, payable semi-annually, in New York or Memphis, for all or any portion of the required amount. The bonds were to be known as the School Bonds, and the semi-annual interest on them was to be provided for by the mayor and board of aldermen, in addition to the school tax authorized. And the mayor and board of aldermen were required to provide a sinking fund, to pay the principal of said bonds. See sec. 10, p. 141.

The act of 1st December, 1869 (Acts of 1869–1870 [private], ch. 26, p. 225), entitled "an act to reduce the charter of the city of Memphis, and the several acts amendatory thereof, into one act, and to revise the same," is the next. It declared "the inhabitants of the city of Memphis are hereby constituted a corporation and body politic, by the name and style of the city of Memphis, and by that name shall have perpetual succession." This act contained

specific grants of many powers, and in addition declared the city "may do and perform all other acts as natural persons." The act defined the boundaries of the city. The powers of taxation it expressly granted were as follows: "The general council shall have power to levy and collect taxes for the purpose of defraying the expenses necessarily incurred in administering the affairs of the city, but the tax imposed for that purpose shall not exceed one *per centum*, or one dollar on every one hundred dollars worth of property within the city limits liable to taxation, and valued at cash prices." Sec. 51, p. 238.

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on the bonds issued or to be issued by the city. The said tax shall not be greater than may be necessary for the purpose. A separate account thereof shall be kept, and the money received under it shall not be applied to any other purpose whatever." Sec. 52, p. 238.

"The general council shall have power to levy and collect a special tax, not to exceed one-half per centum, or fifty cents on every one hundred dollars worth of taxable property, for the sole purpose of creating a sinking fund, to be used in retiring the bonds of the city as the same may become due." Sec. 54, p. 238.

There was also power to levy a poll tax. Sec. 55, p. 238.

Section 57 provided "that all taxes assessed upon real estate within the city shall be a lien upon such real estate, superior to all other claims whatever from the times they are assessed."

The next three sections provided for distress warrants to collect taxes, and for the condemnation and sale of real estate on which taxes were assessed and not paid; also for

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"The general council shall have power, in addition, to levy and collect a special tax for the sole and special purpose of paying the interest, as the same may become due, on the bonds issued or to be issued by the city. The said tax shall not be greater than may be necessary for the purpose. A separate account thereof shall be kept, and the money received under it shall not be applied to any other purpose whatever." Sec. 52, p. 238.

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garnishments as a means of collecting taxes. Provision was made for the cases in which the city should become the purchaser, for the certificate of purchase to be issued to it and other purchasers, and for enforcing the city's rights under the purchases made by it. Secs. 58, 59, and 60.

The city was given authority to subscribe for any amount of stock it might think proper in any railroad in the State of Tennessee which would contribute to the material wealth of the city, and to issue bonds to pay for such subscription; also was given power, for the purpose of making any public improvement deemed necessary, or acquiring any property for the public use of the city, or to fund the debts due or to become due by the city, to issue the bonds of the city upon certain specified terms and conditions. Sec. 61.

The general council was given power to pass all laws and ordinances necessary for the prompt and efficient collection of the revenue of the city. Sec. 65.

The act repealed only conflicting acts. Sec. 78.

The last special act relating professedly to Memphis was that of 2d March, 1870 (Acts of 1869–1870 [private], ch. 118, p. 631). The first section made all fines and forfeitures accruing to the city payable in lawful money of the United States, and prohibited the receipt of any city indebtedness in payment. The second section made all privilege taxes and wharfage payable in like lawful money, and prohibited the receipt of any city indebtedness in payment thereof. The third section made all kinds of taxes to be assessed or become due the city of Memphis payable in lawful money of the United States, and prohibited the receipt of any city indebtedness therefor, except in cases where there are express contracts to the contrary. Section 4 made all debts incurred under a provision of law authorizing a special tax for their payment, payable exclu-

sively out of such special tax, and prohibited the payment of the same out of the general or ordinary revenue of the city.

The other provisions are perhaps not material here.

The act of 24th March, 1873, though on its face a general act, applied only to the city of Memphis. Acts of 1873, ch. 67, p. 102. It is the act under which the taxes to pay the decree of T. E. Brown have been levied. See it copied in *Memphis* v. *United States*, 97 U. S. 293.

The act of the 23d March, 1875 (Acts of 1875, ch. 92, secs. from 33 to 81, each inclusive, p. 148–168), though appearing to be a general act, really only provided a new charter for the city of Memphis. It repealed and took the place of the act of 1st December, 1869. See section 81.

The act of 13th February, 1854 (Acts of 1853–1854, ch. 195, p. 285), declared:

"All taxes assessed upon real estate within the city shall be a lien upon such real estate, superior to all other claims whatsoever from the time the same are assessed." Sec. 4, article 5.

The same language, as has been shown, is repeated in the act of 1st December, 1869. See section 57.

And the act of 23d March, 1875 (Acts of 1875, ch. 92, sec. 70, p. 162, 163), provided for the lien, and for distress warrants, for the sale of real estate, etc.

The act of 1854 authorized the collector, at the end of the fiscal year, to report to the recorder all persons who had been delinquent in paying their city tax, and required the recorder to issue to the collector a distress warrant, and under it the collector was authorized to distrain and sell so much of the delinquent's goods and chattels, lands and tenements, as should be sufficient to satisfy the same. The collector was required to levy upon the delinquent's personal property first, and, afterward, to levy upon and sell

the real estate. He was to sell only so much as was necessary to pay the tax, and where no other persons bid at the sale, the property offered was to be struck off to the city as purchaser. Secs. 9, 10, and 11 of the act of 13th February, 1854 (Acts of 1853–1854, ch. 191, p. 285).

The act of December 1st, 1869 (Acts of 1869–1870, ch. 26 [private]), contained the same provisions, in substance, except that the collector only levied on and sold personal property under the distress warrant. If the taxes could not be made out of the personal property, the collector reported the real estate taxed to the Circuit Court, and the Court entered judgment of condemnation, and directed the property to be sold by the collector. Secs. 58–60, p. 238, 239.

The act of 1st December, 1869, also provided as another mode for the collection of taxes, that the collector might apply to the city recorder for a garnishment against the debtors of any delinquent tax-payer, which the recorder was required to issue and dispose of as a justice of the peace might do. Secs. 58–60.

The act of 13th February, 1854 (Acts of 1853–1854, ch. 191, p. 285), provided: "The mayor and aldermen shall have power to pass all laws and ordinances which may be necessary for the prompt and efficient collection of the revenue of the city. Sec. 31, art. 4. This provision was, in substance, in the act of 20th February, 1836. Acts of 1835–1836 [private], ch. 9, sec. 20, p. 82.

The act of 1st December, 1869, contained the same provision (sec. 65); also the act of 23d March, 1875 (ch. 92, sec. 70, p. 162).

By section 4, ch. 102, of the acts of 1867–1868 [private], p. 246, it was declared: "The same powers, penalties, and provisions of law, now or hereafter existing, for and concerning the collection of State and county taxes, shall be

applicable also to the collection of city taxes; and the same shall be applied by the authorities and officers of the city as fully as by those of the State and county; and the same rights shall obtain thereunder; and these provisions shall apply to the taxes unpaid as well as to those hereafter to be levied."

The act of 23d March, 1875 (Acts of 1875, ch. 92, sec. 72, p. 164), provided for the adoption of the revenue laws of the State by the city.

The Code of Tennessee (secs. 554–556) has always given the most ample lien for State and county taxes.

And the Supreme Court of Tennessee, in *Swan* v. *M. and A. of Knoxville*, 11 Humphrys, 130, gave the fullest effect to the lien of a town on real estate for taxes due.

By the act of December 1st, 1869, sec. , the ordinances published under the direction of the general council are admissible in all the Courts, without proof.

And section 79 of ch. 92, p. 166, of the Acts of 1875, so provides.

By section 209 of the Published Ordinances, of 1873, the city adopted all the remedies provided by the laws of the State of Tennessee for the collection of State, county, or other taxes, for the collection of city taxes; and, in addition, required the city attorney, when so directed by the mayor, to file bills in the name of the city, in the Court of Chancery, for the enforcement of the lien reserved by the city charter, and also to bring actions against any delinquent tax-payer, in the name of the city, for such amount as might be due from him.

By the act of 23d March, 1875 (Acts of 1875, ch. 92, sec. 42, p. 152, 153), the ordinance referred to was continued in force by the State legislature. And by section 70 of the same act (p. 163), it is declared: "The city shall have all the rights and remedies, as to writs of possession

and the enforcement of remedies for its taxes, either at law or in equity, as the State has or may hereafter have."

And see section 72 of the same act, p. 164.

I shall not undertake to argue the questions certified in the form in which they are presented, but will simply argue in support of the whole decree, taking no further notice of those questions.

I.

The first question presenting itself is, whether the act of the legislature of the State of Tennessee, of the 31st January, 1879 (Acts of 1879, ch. 10, p. 13), repealing the charters of the city of Memphis, and destroying its corporate existence, is a valid law?

It is hardly possible to read the various acts which have been cited without coming to the conclusion that the legislature of Tennessee sought to make the impression, or at least, what it said was well calculated to make the impression, that the city of Memphis was a permanent government, that it had ample power to make certain contracts, and that all the powers that would ever be necessary to enable it to perform its part of those authorized contracts had been conferred.

Is it too much to say that there was at least an implication from what the legislature did, that *it* would not deprive the city of existence, or of the power of doing what it had, in effect, assured the persons becoming its creditors it could and should do, namely, pay their debts?

Was there not, in effect, a warranty that the State would not revoke its grant, or, at least, is there not an estoppel in favor of creditors?

Fletcher v. *Peck*, 6 Cranch, 87.

New Jersey v. *Wilson*, 7 Cranch, 164.

In 1 Wilcock's Municipal Corporations, p. 325, sec. 852, it is said: "It has been a disputed question whether a corporation can be actually dissolved except by extinction of all the people of the place, nor is it yet set at rest . . . When the question has been closely pressed on the courts they have avoided it by finding that in the particular cases urged the corporation was in a state of suspension, or that the surrender of the charter was invalid for want of enrolment, or that there was an error in the proceedings against the corporation."

Judge Dillon, 1 Municipal Corporations, sec. 38, says in England it is settled that the crown has no power, without the consent of those to be affected thereby, to alter or abolish municipal charters, or to impose new ones on the corporators. But Parliament may abolish or alter charters or impose new ones at its will, and without the consent of the inhabitants. And, in this country, the State legislatures, except as restrained by the National or State constitutions, may exercise powers similar to those belonging to the Parliament.

The principle decided in *Milner's Adm'r* v. *Pensacola*, 2 Woods C. C., p. 632, 640–643, approved by this court in *Broughton* v. *Pensacola*, 93 U. S. p. 270, is stated in the syllabus, thus: "It is not within the power of the legislature by a repeal of the charter of a municipal corporation to invade the rights of its creditors and cancel its indebtedness. Such legislation impairs the obligation of contracts and is unconstitutional."

Judge Woods seems to have been of opinion that, as the power to levy taxes to pay the bonds involved in the case before him was a part of the contract, and could not be taken away by the legislature, so, the legislature could not utterly destroy the corporation, and thereby take away not only the power of taxation but leave no corporate en-

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tity in existence against which suit might be brought. His theory was that, "the dissolution of the corporation, of course, puts an end to its power of taxation, and renders the collection of debts owing by it an impossibility." And his conclusion seems to have been that the legislature had not the power to destroy Pensacola as a corporation. p. 641, 642.

Judge Dillon expresses a similar view in *Welch* v. *St. Genevieve*, 1 Dillon's C. C. p. 130, 134, 135, a case, the facts of which were somewhat similar to the facts of the case before Judge Woods.

And see 1 Dillon's Municipal Corporations, sec. 114.

And probably, in the case of *Broughton* v. *Pensacola*, 93 U. S. 266, language is used tending to support the same position.

In the view I take of the case, I need spend no time on this question, as all I claim is substantially assured by holding the repeal had not the effect to impair the obligation of the contracts of the city's creditors, a position about the correctness of which there can not be very much dispute.

It is proper I should say here that the act has been held valid by the Supreme Court of Tennessee in the case of *Luehrman* v. *The Taxing District*, to be reported in 2 Lea's (Tenn.) Rep. , not yet published.

However, at the close of the opinion of the majority of the court, it is said: "The effect of what has been done on the rights of creditors is not before us, and no opinion is expressed. We merely hold that the previous charters of the city of Memphis have been validly repealed, and that the same people and the same territory have been constitutionally re-incorporated under a general law providing for the organization of municipal corporations."

II.

The portion of the act establishing the Taxing District, sec. 14, p. 26, ch. 11, Acts of 1879, which vests in the State "the indebtedness to the city of Memphis for taxes or otherwise," is unconstitutional.

In addition to repealing the several acts incorporating the city of Memphis it will be noticed that the act in question declares: "And the public buildings, squares, promenades, wharves, streets, alleys, parks, fire-engines, hose and carriages, horses and wagons, engine-houses, engineer instruments, and all other property, real and personal, hitherto used by such corporations for municipal purposes, are hereby transferred to the custody and control of the State, to remain public property, as it has always been, for the uses to which said property has been hitherto applied." Acts of 1879, ch. 10, sec. 4, p. 15.

By section 14 of chapter 11 of the acts of 1879 (p. 25, 26), the same property is "transferred to the custody and control of the board of fire and police commissioners, to remain public property, as it has always been, for the uses to which said property has been hitherto applied."

By the same section (p. 26), "all indebtedness for taxes, or otherwise, whether in litigation or otherwise, due to said municipalities, shall vest in and become the property of State, to be disposed of for the settlement of the debts of said extinct municipalities, as shall hereafter be provided by law."

Aside altogether from the rights of creditors, or considerations growing out of them, I contend the provision last quoted can not stand.

The legislature had no power whatever to transfer to the State the indebtedness for taxes, or otherwise due the city of Memphis.

In *Trustees of Aberdeen Female Academy* v. *Mayor and*

Aldermen of Aberdeen, 13 Smedes & Marshall, 645, 646, 647, Justice Clayton, delivering the opinion, said:

"The charters of public corporations may be repealed, modified, and amended, at the pleasure of the legislature, so far as relates to the political rights and powers of the corporation. . . . In *People* v. *Morris*, 13 Wendell, 337, it is said, 'We know of no vested rights of political power in any citizen or body of citizens, except those conferred by the constitution.' But there is a well-defined limit to this doctrine. Public corporations may have, and often do have, private rights and private interests. . . . As to such interests, they are regarded in the same light as individuals, and are dealt with accordingly."

The town, in the case just referred to, having been granted the sole power to grant certain licenses, and to appropriate the money arising therefrom to city purposes, an act of the legislature changing the purposes to which the money so arising was to be applied, and directing it to be paid to an incorporated academy, was held to be unconstitutional, because the city had a vested right in the proceeds arising from granting the licenses which the legislature could not take away.

See also *Corporation of Aberdeen* v. *Saunderson*, 8 Smedes & Marshall, 670.

In the first case, Justice Clayton, delivering the opinion of the Court, after citing several authorities, said:

"From these authorities it would seem to follow that it is beyond the power of the legislature to make a different dispostion of the money arising from such licenses from that contained in the charter, unless with the consent of the corporation."

And, taking the distinction between grants of powers and privileges for public or municipal purposes and those conferred for its private advantage or emolument, the Court said:

"The power to grant the licenses was given for public purposes, and to enable the corporation to make a selection among those who might apply for such license to limit the number, and thus in some degree to check the evils of indiscriminate and unlimited license. . . . Yet it is manifest that a profit and advantage were expected to be derived from this source, and that they were to inure to the corporation. So far as relates to the power of granting the licenses the legislature might repeal it, or prohibit its exercise. That pertains to the government of the public corporation. The fund itself arising from such licenses is for the private advantage and emolument of the town. The legislature can not continue the franchise and permit its exercise, and yet divert the advantage to be derived from it to another purpose than that pointed out by the charter, because that would invade the private interest of the corporation."

And see *Benson* v. *The Mayor*, 10 Barbour, 223, where it is decided that "vested rights in property, acquired by virtue of a statute can not be divested, nor destroyed, by a repeal or modification of the statute." 10 Barbour, 244.

In the *Mayor* v. *Towns*, 5 Sneed, 186, it was held that an act of the legislature of the State of Tennessee which directed that that portion of the revenue a county collected in the limits of a city, should be paid into the treasury of the city, for its sole use and benefit, was unconstitutional and void.

The Court said: "Now, has the legislature the power to divert the fund from the purposes for which it was levied and collected and transfer it to another separate and distinct corporation, to be by it appropriated and used at its discretion? We think not. This would be an unauthorized interference with vested rights." 5 Sneed, 192.

"Grants of property, and of franchises, coupled with an interest, to public or political corporations, are beyond

legislative control, equally as in the case of property of private corporations." 2 Kent's Com. 305, and note.

In *Dartmouth College* v. *Woodward*, 4 Wheaton, 663, the Chief Justice said:

"In respect to public corporations, which exist only for public purposes, such as towns, cities, etc., the legislature may, under proper limitations, change, modify, enlarge, or restrain them, securing, however, the property for the use of those for whom and at whose expense it was purchased."

Judge Story used language the same in substance in *Terrett* v. *Taylor*, 9 Cranch, 43, 52.

In *Dartmouth College* v. *Woodward*, 4 Wheaton, 698, 699, Justice Story said:

"In respect to franchises, whether corporate or not, which include a pernancy of profits, such as a fishery, a ferry, a market, or a fair, there is no pretense to say that grants of them are not within the constitution. . . . The government can not recall its own endowment granted to any hospital, or college, or city, or town, for the use of such corporations."

In *Terrett* v. *Taylor*, 9 Cranch, 43, 50, Justice Story, delivering the opinion, said:

"The dissolution of the regal government no more destroyed the right to possess, or enjoy, this property than it did the right of any other corporation, or individual, to his or its own property. The dissolution of the form of government did not involve in it a dissolution of civil rights, or an abolition of the common law under which the inheritances of every man in the State were held. The State itself succeeded only to the rights of the crown, and we may add, with many a flower of prerogative struck from its hands. It has been asserted, as a principle of the common law, that the division of an empire creates no forfeiture of previously

vested rights of property. . . . And this principle is equally consonant with the common sense of mankind, and the maxims of eternal justice. Nor are we able to perceive any sound reason why the church lands escheated or devolved upon the State by the revolution, any more than the property of any other corporation created by the royal bounty, or established by the legislature. The revolution might justly take away the public patronage, the exclusive cure of souls, and the compulsive taxation for the support of the church. Beyond these we are not prepared to admit the justice or the authority of the exercise of legislation."

And see *Town of Paulet* v. *Clark*, 9 Cranch, 292, 336.

In *Montpelier* v. *East Montpelier*, 27 Vermont, 704, it is decided:

That the abolition by an act of the legislature of a municipal corporation which was the trustee of the legal title to certain rights in land for public uses, and the creation in the place thereof, of two new and distinct municipal corporations out of the same territory, and the division by the act of the legislature between the two new corporations of the property, etc., of the old municipality, while it effectually destroyed the old corporation, the trustee, did not affect, and probably could not have affected, if so intended, the rights or property of which the old corporation was so the trustee, nor could either of the new corporations manage or control them.

After referring to many of the cases, Judge Dillon, speaking of the extent of the power of the legislature over the rights of property of a municipal corporation, says:

"The weight of opinion seems to be in favor of the doctrine that there may be in such corporations rights under contracts and grants which are beyond destruction

by the legislature, though not beyond legitimate legislative authority and control."

1 Dillon Munic. Corp., sec. 40.

Cooley's Const. Lim. *238.

Grogan v. *San Francisco*, 18 California, 590.

And see

Lowry v. *Francis*, 2 Yerger, 533, and cases referred to in syllabus, Cooper's edition.

Atkins v. *Randolph*, 31 Vermont, 226.

People v. *Ingersoll*, 58 New York, 1, 28–36.

III.

Assuming the validity of the act of the legislature which repealed the charters, and that thereby the legal existence of the city of Memphis as a municipal corporation was destroyed, the next question is what effect had such destruction upon the debts owing by the city?

In *White* v. *Campbell*, 5 Humphreys, 37, which was followed by *Hopkins* v. *Whitesides*, 1 Head, 30, it was announced to be the doctrine of the common law, as in force in Tennessee, that upon the civil death of a corporation its real estate reverted to the grantors, its personal estate vested in the State, and all debts due by it and all debts due to it were extinguished. It is not necessary in this case to question the correctness of those decisions in the cases in which they were made, though I by no means admit their correctness.

They were, in effect, repudiated, or at least the principle they proceed upon was not given operation in *Ingraham* v. *Terry*, 11 Humphreys, 572.

While he seems to admit the correctness of the statement of the common law contained in the above cases, Judge Dillon says:

"In this country, . . . it may, perhaps, be safely affirmed that it would not on full consideration be applied to the dissolution of a municipal corporation by absolute and unconditional repeal of its charter; or (if that may be done) to the case where the charter of such a corporation is forfeited by judicial sentence." 1 Dillon Municipal Corpotions, sec. 113.

In the case of *Port Gibson* v. *Moore*, 13 Smedes & Marshall, 157, the town of Port Gibson had been incorporated by an act of the legislature of the State of Mississippi, passed in the year 1821. While the town was acting as a corporation under that act, it incurred a debt to Moore. Afterward, in the year 1841, another act, repealing the act of 1821, incorporating the town, was passed by the legislature. In the year 1844, the legislature passed an act, repealing the repealing act of 1841, and declaring the act of 1821, incorporating the town, to be in full force. After the passage of this last act, Moore sued the town to recover his debt. The Court decided: 1. That the repeal of the act of 1821 was a dissolution of the corporation; 2. That, by the common law, upon its dissolution, the debts owing by it, of which that to Moore was one, were extinguished; and, 3. That the reviving act of 1844 did not resuscitate the old, but created a new corporation, and did not revive the liabilities of the old corporation.

The counsel for the creditor, the Court says, admitted the proposition that the dissolution of the corporation extinguished the debts it owed. See p. 159. At least, it is certain the proposition was not discussed, and the Court seems to have relied principally on the *dictum* in *The Commercial Bank of Natchez* v. *Chambers*, 8 Smedes & Marshall, 47.

The same Court, in the subsequent case of *Coulter* v. *Robertson*, 24 Mississippi, 278, involving the same corpora-

tion involved in the case in 8 Smedes & Marshall, 47, went into a discussion of the question, and declared the above doctrine to be the settled law of Mississippi, except as changed by statute.

No doubt there are other cases the same in principle as those cited from Tennessee and Mississippi. But all, or nearly all the modern cases are against them; and it is submitted not only that they are not law *now*, but were not correctly decided originally.

So far as my investigation extends, the case of *Port Gibson* v. *Moore* stands alone—the only one of its kind.

Judge Dillon thinks the Court overlooked the question arising out of the clause in the constitution of the United States, forbidding a State to pass a law impairing the obligation of contracts. 1 Dillon's Municipal Corporations, sec. 113 and note.

And, without doubt, it disregarded the principle acted upon in the *Mayor of Colchester* v. *Seaber*, 3 Burrow, 1866, and other similar cases.

In *Mumma* v. *The Potomac Company*, 8 Peters, 281, Judge Story, delivering the opinion of the Court, said:

"We are of opinion that the dissolution of the corporation, under the acts of Virginia and Maryland, . . . can not, in any just sense, be considered within the clause of the constitution of the United States on this subject, an impairing of the obligation of the contracts of the company, by those States, any more than the death of a private person can be said to impair the obligation of his contracts. The obligation of those contracts survives, and the creditors may enforce their claims against any property belonging to the corporation, which has not passed into the hands of *bona fide* purchasers, but is still held in trust for the company, or for the stockholders thereof, at the time

of its dissolution, in any mode permitted by the local laws." 8 Peters, 286.

In *Curran* v. *The State of Arkansas*, 15 Howard, 304, in answer to the argument that, as the State could create and could destroy the corporation, it could destroy all its contracts, and could modify, obstruct, and abridge the rights under them, without repealing the charter, the Court said that, admitting the power to repeal the charter, such repeal would not destroy the contracts of the corporation, or withdraw the property of the corporation from the just claims of its creditors, and referred to *Mumma* v. *The Potomac Company*, as authority. 15 Howard, 310–313.

The case of *Lennox* v. *Roberts*, 2 Wheaton, 373, was also referred to in the same case. At the expiration of the charter of the Bank of the United States, its effects were conveyed by a deed in trust for creditors and stockholders. The defendants were the indorsers on notes owned by the bank, but the assignees in trust had not the legal title by indorsement of the notes. The suit was by the assignees, in equity, to compel the defendants to pay their notes for the benefit of the creditors. The bill was sustained.

The case of *Coulter* v. *Robertson*, 16 Howard, 106, was a writ of error from this Court to the Court of Appeals of the State of Mississippi, to revise the judgment involved in *Coulter* v. *Robertson*, 24 Mississippi, 278. It was sought to raise the question, on the writ of error, whether the results of the dissolution of the Commercial Bank of Natchez, as declared by the Court of Appeals of the State of Mississippi, upon the debts due to and from the bank, *did* not impair the obligation of the contracts made by the bank. The Court avoided the question, by holding that the only question involved was *the extent* of the power of the trustee of the bank, under the statute of Mississippi, under which he was appointed, and that the construction put upon the

* Murray v. Charleston 96 U. S. 432, 444—445

statute of Mississippi by the Court of Appeals, that the trustee had no power to collect the debt sued for, was conclusive, and hence, that no question whether the obligation of a contract had been impaired, was presented. The writ of error was accordingly dismissed.

The case of *Bacon* v. *Robertson*, 18 Howard, 480, involved the very same bank, to wit, the Commercial Bank of Natchez, and was a bill filed by the stockholders of the bank, on a theory totally inconsistent with the decision in the case in 24 Mississippi. The opinion was delivered by Justice Campbell, and is characterized by Judge Dillon as admirable. 1 Dillon Munic. Cor., sec. 114, in note. Two propositions were decided:

(1.) That chancery, as appears by the more modern decisions of the Courts of England, has jurisdiction to protect the rights both of creditors and stockholders in cases where the charters of commercial corporations are forfeited.

(2.) That the surplus of the property of such a corporation, after paying all its debts, is for distribution among the stockholders, and they may maintain a bill in equity to compel such distribution.

On one occasion, this Court said: "Valid contracts, made by the corporation, survive even its dissolution by voluntary surrender or sale of its corporate franchises, and the creditors of the corporation, notwithstanding such surrender or sale, may still enforce their claims against the property of the corporation, as if no such surrender or sale had taken place." *Railroad Company* v. *Howard*, 7 Wallace, 410.

While announcing, in very broad terms, in *Laramie County* v. *Albany County*, 92 U. S. 307, the doctrine, so frequently stated in the books, that the legislature has the absolute right to repeal or change the charters of munici-

pal corporations, this Court adds the qualification, "*so long as private rights are not thereby violated.*" See p. 310, 312.

Modern legislation has generally provided for the disposition of the assets of corporations on their dissolution.

The Code of Tennessee, Sec. 3409 to 3431, each inclusive, provides for the winding up of dissolved corporations.

So far as it provides for suits to be conducted by the Attorney-General in the name of the State, the system is very similar to that in force in the Court of Chancery in England, referred to in *United States* v. *Union Pacific Railroad Co.*, 98 U. S., 617, 619.

And so far as suits by creditors and stockholders are authorized, the statute is but in affirmance of the doctrines of courts of equity, independent of the statute, as was decided in the case of *Marr* v. *Bank of West Tennessee*, 4 Coldwell, 471, and may be seen by reference to the numerous cases in this court, referred to in this brief.

After providing for a judgment of dissolution against the corporation, in section 3425, the Code in the next section, 3426, provides:

"Such judgment of dissolution does not extinguish the debts due to or from the corporation; but the Court shall appoint a receiver with full power to take possession of all the debts and property, and sell, dispose of, collect and distribute the same among the creditors and other persons interested under the order of the Court."

The last section, 3431, declares:

"A corporation is not dissolved by the nonuse or assignment to others, in whole or in part, of its powers, franchises and privileges, unless all the corporate property has been appropriated to the payment of its debts; and any creditor for himself and other creditors, whether he has recovered judgment or not, or any stockholder for himself and other stockholders, may file a bill under the pro-

visions of this chapter to attach the corporate property, and have such property applied to the payment of the debts of the corporation, and any surplus divided among the stockholders."

Sections 1492, 1493, etc., of the Code contain provisions on the same subject.

And under the title "Chancery Jurisdiction," the Code provides generally:

SEC. 4294: "The creditors of a corporation may also, without first having obtained a judgment at law, file a bill in the Chancery Court to attach the property of the corporation, and subject the same by sale, or otherwise, to the satisfaction of their debts, when the corporate franchises are not used, or have been granted to others in whole or in part."

SEC. 4295: "In such cases the Court may appoint a receiver, take an account of the affairs of the corporation, and apply the property and effects to the payment of the debts *pro rata* and divide the surplus, if any, among the stockholders."

If it was true that the extinction of all the debts owing by it resulted from the dissolution of a corporation, as a necessary consequence, it would inevitably follow that no corporation could be dissolved by an act of the legislature so long as it was indebted. For, no State can pass a law impairing the obligation of contracts, and certainly a law which destroys a party to a contract, and his capacity to perform it, impairs its obligation. *Milner's Administrator* v. *Pensacola*, 2 Woods C. C., 632, 640, 643.

In *Von Hoffman* v. *Quincy*, 4 Wallace, 535, the following propositions were decided:

1. A power to levy and collect taxes given by a statute of a State in order to enable a municipal corporation to provide the means with which to pay bonds to be issued

by it, is a contract with the persons who acquire such bonds for value, within the constitution of the United States, binding both the State and the corporation, and can not be withdrawn so as to affect the bonds.

2. A subsequent statute repealing or restricting the power so to levy and collect taxes, as so given, so far as it affects such bonds, is a nullity.

3. It is the duty of the coporation to impose and collect the taxes required in all respects as if the second statute had not been passed.

4. If the corporation does not perform such duty, a *mandamus* will be issued to compel it to do so.

When, instead of taking away the power of taxation only, the legislature proceeds to demolish the corporation itself, what must be said of the character of its act?

The truth is, that unless it can be shown that, notwithstanding the repeal of the charter, an adequate remedy remains, either at law or in equity, for the collection of the taxes necessary to pay the city's debts, the act repealing the charter must itself be held unconstitutional, as impairing the obligation of contracts.

It is only upon the theory that there is a remedy left for the collection of the debts that the repealing act can stand.

It has frequently been decided that a State, by becoming interested with others in a banking corporation, or by owning all the capital stock, does not impart to that corporation any of its privileges or prerogatives, but lays down its sovereignty so far as respects the transactions of the corporation, and exercises no power or privilege in respect to those transactions not derived from the charter.

United States Bank v. *The Planters' Bank of Georgia*, 9 Wheat. 904;

Bank of Kentucky v. *Wistar*, 3 Peters, 401;

Briscoe v. *The Bank of Kentucky*, 11 Peters, 324;
Darrington v. *The Bank of Alabama*, 13 Howard, 12.

Specifically applying the principle, it was decided in *Curran* v. *The State of Arkansas*, 15 Howard, 304, where the State of Arkansas had assumed, by virtue of its rights as sovereign, to withdraw the assets of an insolvent bank in which it was the sole stockholder and appropriate them to the satisfaction of certain claims it asserted against the bank, to the exclusion of other creditors, that the fact that the State was the sole stockholder and paid in the whole capital stock, and consequently became entitled to all its profits, in no way affected the equitable rights of the creditors of the corporation on its dissolution to have its assets, including its capital stock, applied to the payment of their debts. See 15 Howard, p. 308–309.

The case of *Barings* v. *Dabney*, 19 Wallace, 1, adjudicates almost precisely the same thing.

The same principle must be true as applicable to the creation, abolition, change, or modification of municipal corporations. The State may create them, and may confer powers upon them at its discretion. And, likewise, at its discretion, it may abolish the corporations, or alter, restrict, or withdraw their powers. All this it may do by virtue of its sovereignty. But it may not violate the constitution of the United States, which is the paramount law. If, under the powers it has granted its municipal corporations, they have made contracts, then it must exercise its sovereign power of abolishing them, or altering, restricting, or withdrawing the powers it has conferred upon them, in subordination to the provision of the constitution of the United States, which forbids a State to pass any law impairing the obligation of contracts. Under this state of case, it is no longer sovereign. It has laid down its sovereignty, so far as respects the obligation of the contracts its municipal

corporations have made. If to protect and enforce that obligation *fully* requires that a municipal corporation *shall not* be abolished, it *can not* be abolished. No doubt the Courts would allow the State to exercise any of its sovereign powers over municipal corporations at discretion, except where manifestly the obligation of the contracts of such corporations was impaired by such exercise. But no legislation having that effect, whatever form it might assume, would be allowed to stand. *

The Supreme Court of Tennessee, in effect, recognized the doctrine in *Howard* v. *Hornor*, 11 Humph. 534, where it held that where Decatur county was made out of territory detached from Perry county, and was, by the act of the legislature effecting the dissolution, to pay a part of the debts Perry county owed at the time, Perry county remained liable for the whole of the debts, and that the legislature had no power to discharge it from any part.

In section 36 of his work on Municipal Corporations, Judge Dillon qualifies his statement that the legislature can change at pleasure legislative acts respecting municipal corporations, by adding, "where the *constitutional rights of creditors* and others are not involved." The italics are his. *See also section* 38.

And again in section 41: "If a municipal corporation, however, becomes indebted, *the rights of creditors* can not, it is clear, be impaired by any legislative enactment."

And still again in section 114: "As respects *the creditors* of a municipal corporation, their rights are protected from legislative invasion by the constitution of the United States, and no repeal of a charter of a municipal corporation *can so dissolve it* as to impair the obligation of the contract; or, it may probably be safely added, *preclude the creditor* from recovering his debt."

In *Sturges* v. *Crowninshield*, 4 Wheaton, 122, the admit-

* Murray v. Charleston 96 U. S. 432, 444–447

ted right of a State, in the absence of legislation on the subject by congress, to pass a bankrupt or insolvent law, it was held, must be exercised in subordination to the provision in the constitution of the United States, that no State shall pass a law impairing the obligation of contracts.

Noticing the distinction taken in many of the cases between the "governmental, legislative, or public character" of a municipal corporation, and its "proprietary or private character," Judge Dillon says:

"Over all its civil, political, or governmental powers the authority of the legislature is, in the nature of things, supreme and without limitation, unless the limitation is found in some peculiar provision of the constitution of the particular State. But, in its proprietary or private character, the theory is that the powers are supposed not to be conferred primarily or chiefly from considerations connected with the government of the State at large, but for the private advantage of the particular corporation as a distinct *legal personality;* and as to such powers and to property acquired thereunder, and contracts made with reference thereto, the corporation is to be regarded as *quo ad hoc* a private corporation, or, at least, *not public* in the sense that the power of the legislature over it is omnipotent." 1 Dillon's Munic. Corp., sec. 39. And see the note and the cases cited.

While in the note Judge Dillon doubts the propriety of the division or distinction made in the cases, and seems to think all the powers of a municipal corporation are to be considered as public and not private, he repeats what he has elsewhere several times said: "Contracts in favor of the creditor are protected by the National constitution." p. 152.

And again this Court has said: "A municipal corporation, . . . when authorized to take stock in a railroad

company, and issue its obligations in payment of the stock, . . . is to that extent to be deemed a private corporation, and its obligations are secured by all the guarantees which protect the engagements of private individuals. The inhibition of the constitution which preserves against the interference of a State the sacredness of contracts, applies to the liabilities of municipal corporations created by its permission." *Broughton* v. *Pensacola*, 93 U. S. 266, 269.

Of course the principle extends to *all* the debts a municipal corporation lawfully incurs.

IV.

Taxes already levied and to be levied, to be regarded only as the property of the city for the purpose of paying its debts.

Nor is there any thing in the nature of taxation or taxes which enabled the legislature to legislate with reference to the taxes already levied and due the city of Memphis, or those hereafter to be levied for the purpose of paying the debts of the city, in a manner different from what it might have legislated had the assets of the city, instead of being composed, as they are, of taxes already levied and uncollected, and the power to make future levies as may be necessary, consisted of debts due to it by contract or personal or real property owned absolutely in its own right, *and subject to execution at law.*

The fact that the debts of the city were to be paid exclusively by taxation, that it had no authority to decline to exercise that power for the purpose of paying them, and that the power of taxation, so far as it affected the payment of its debts, could not be taken from it, sufficiently demonstrates the correctness of this proposition, and shows that in substance and fact the taxes are nothing more than

the property of the city for the payment of what it owes, and should be treated accordingly.

In *United States* v. *Pacific R. R. Co.*, 4 Dillon's C. C. R. 66, it was held, taxes due the United States are debts collectible by suit; that is, by an action at law or a bill in equity, according to the nature of the relief sought.

Justice Miller, delivering the opinion, referred to *Lane County* v. *Oregon*, 7 Wallace, 71, where taxes due the State of Oregon were held not to be debts within the meaning of the legal tender acts of Congress.

He also referred to *Savings Bank* v. *United States*, 19 Wallace, 227, where it was held that the National tax on savings banks might be recovered in an action of debt. See also—

Meredith v. *United States*, 13 Peters, 486.

United States v. *Lyman*, 1 Mason C. C. 482.

2 Dillon on Municipal Corporations, sec. 653.

Cooley on Taxation, 13, 300.

In the *Mayor* v. *McKee*, 2 Yerger, 166, the Supreme Court of Tennessee decided that "the tax which a municipal corporation is by its charter authorized to impose becomes, when imposed, a debt from the corporator."

And in *Rutledge* v. *Fogg*, 3 Coldwell, 568, a similar tax was treated as an absolute debt.

And in a recent case in the same Court, *City of Memphis* v. *Looney*, not yet reported, it was held a bill in equity could be maintained by the city against a tax debtor to recover taxes due by him to the city, and to enforce the lien created by the charter on the property taxed for the purpose of collecting the tax.

And in *Towns* v. *The Mayor*, 5 Sneed, 186, taxes are recognized as property, and the same rule is applied to them that would be applied to other property in a similar case.

V.

The right of these creditors, even considering them only as general creditors, and the assets sought to be reached only as general assets of the city of Memphis is plain enough.

But the case is stronger: Some of the creditors have had taxes levied specially to pay their particular judgments; portions of these taxes remain uncollected. One object of the bills is to have them collected and applied to the payment of the judgments they were levied to pay. The bill of T. E. Brown is of that sort. Record, p. 39–45.

The case of Hopkins Loudon is stronger, if possible: He made a contract to do work for the city, limiting his right to payment to the proceeds of certain specified taxes, then already levied. The judgment he recovered restricts him to those particular taxes for payment. His bill is to have the uncollected part of those taxes collected and applied to pay his debt. Record, p. 22–32.

Of the other creditors included in the bills of Robert Garrett & Sons and others (Record, p. 1–21), and Fairman Rogers and others (p. 46–58), many of them have had taxes levied to pay their particular judgments, and portions of those taxes remain uncollected, and the purpose of the bills, in part, is to have those particular taxes collected and applied to the payment of their respective judgments.

It appears self-evident the particular creditors, to pay whose debts the taxes have been levied, have such claims or liens on the taxes that the courts will recognize and give effect to them.

The case of *Meanhaut* v. *New Orleans*, 2 Woods C. C. 108, 112–114, decided that equity will control the application of a fund raised by taxation, for a particular purpose, at the suit of the parties in interest, and will require its appropriation to such purpose.

And see the cases cited in the opinion.

A creditor having a debt payable by law out of a particular fund, in the hands of a certain officer, has the right to have his distributive share of such fund paid him, and the Courts will enforce such right. *The People* v. *Dubois*, 19 Illinois, 223.

VI.

Supposing then that the debts of the city of Memphis exist as valid debts, just as if the charters of the city had not been repealed, the next question is, the repeal of the charters having been accomplished, and Memphis being now a dissolved corporation, in what way are the creditors to enforce the collection of their debts?

In *Edwards* v. *Kearzey*, 96 U. S. 595, it was decided—"The remedy subsisting in a State when and where a contract is made, and is to be performed, is a part of its obligation; and any subsequent law of the State which so affects the remedy as substantially to impair and lessen the value of the contract, is forbidden by the Constitution of the United States, and is therefore void."

The remedy of these creditors, before the repeal of the city charter, was to have the taxes already levied collected, and where a sufficiency had not been levied, to have them levied as well as collected, and applied to the payment of their several debts. They were entitled to have all this done by the city of Memphis, in a summary way, through its officers and the agencies provided. It is, of course, impossible for the city to proceed to levy or collect taxes, or pay its debts, since it, as well as its officers, has been destroyed.

The creditors lost nothing, tested by the law, by the repeal of the city's charter, else the obligation of their contracts *would be* impaired by the repeal, a result not permissible. Therefore, conceding they had no right to any particular *form* of remedy, and that the cases do not mean any

such thing, still a remedy yielding in substance, and within a reasonable time, the same results as that by the levy and collection by the city of taxes sufficient to pay their debts, must be afforded them. Such a remedy they have the constitutional right to insist on.

In *Von Hoffman* v. *Quincy*, 4 Wallace, 535, the test by which to determine when a legislative act affecting remedies is or is not constitutional, is stated, thus: " " Whenever a change of the form of the remedy impairs substantial rights, the act is within the prohibition of the constitution, and to that extent void." p. 553, 554.

Proceeding to apply the test to the case then before it, the Court said:

" The laws requiring taxes to the requisite amount to be collected, in force when the bonds were issued, are still in force, for all the purposes of this case. The act of 1863, so far as it affects these bonds, is a nullity. It is the duty of the city to impose and collect the taxes in all respects as if that act had not been passed. A different result would leave nothing of the contract but an abstract right, of no practical value, and render the protection of the constitution a shadow and a delusion." 4 Wallace, 555.

The case of *Memphis* v. *The United States*, 97 U. S. 293, extends the principle just stated to a case where, *after* the debt had been incurred by the city, under the belief, on its part, and on the part of the creditor, that a sufficient remedy had been provided for its collection, which belief, however, had turned out not to be well founded, the legislature had passed an act granting to the city the power to levy an additional tax to pay the debt. The Court held, the creditor had acquired a vested right, under and by virtue of the statute, in and to the exercise of the power of taxation to the extent necessary to pay the debt, and that a repeal of the statute conferring such power could not affect the creditors' right. And notwithstanding the legislature

had, in form, repealed the statute, the Court awarded a *mandamus* to compel the city to levy and collect the tax, just as if the repealing statute had not been passed.

In the case of *Curran* v. *The State of Arkansas*, 15 Howard, 304, the Court said, that in determining the question, whether an act of the legislature affecting remedies impairs substantial rights, it is *first* to be considered what remedies the creditor had before the legislation; and *secondly*, the extent to which the legislation took away the remedies, and thereby impaired the rights under the contract.

In that case, the Court determined, that on the dissolution of the bank, its effects became a trust fund for the payment of its creditors, who had a remedy in equity to follow them into the hands of any one not a *bona fide* creditor or purchaser, without notice, and that a law of the State which deprived creditors of this remedy so to follow the effects of the bank, and appropriated them to the use of the State, impaired the obligation of the contracts of the creditors. 15 Howard, 307–308, 309–314, 316–320.

Judge Curtis, who delivered the opinion, in his edition of the reports, formulated the principles decided, as follows:

"If the charter of a corporation set apart a fund as capital, out of which debts are to be paid, it amounts to a contract with those who become creditors on the faith of it, that the fund shall not be withdrawn and appropriated to the use of the owner or owners of the capital stock."

"A law which deprives creditors of a corporation of all *legal remedy* against its property, impairs the obligation of its contracts, and is invalid."

In the case of *Curran* v. *The State of Arkansas*, the position was taken, that the State must be presumed to do justice, and that the remedy by petition to the legislature

was an adequate remedy, and hence the creditors of the bank had lost nothing substantial by the acts of the legislature transferring the assets of the bank to the State.

In answer to the position, the Court, as has been stated, decided the creditors were entitled to a remedy by due course of law.

And see Cooley's Constitutional Limitations, p. 289–293.

A statute under which the revenues of a canal company have been pledged for the payment of certain loans, can not be repealed so as to divert such revenues from the payment of such loans. *Trustees of the Wabash and Erie Canal Co.* v. *Beers*, 2 Black, 754.

In *Woodruff* v. *Trapnall*, 10 Howard, 190, an act of the legislature that the notes of a certain bank should be received in payment of all debts due the State, was held irrepealable as to the notes of the bank outstanding at the date of an act prohibiting their being so received.

And exactly the same decision was had in a case where the act of the legislature in force when the notes of the bank were issued extended to taxes due the State as well as debts. *Furman* v. *Nichol*, 8 Wallace, 44.

In *City of Memphis* v. *Bethell*, decided by the Supreme Court of Tennessee at the fall term, 1875, at Jackson, not yet reported, it was held that where the city had by a pre-existing statute power to levy taxes sufficient in amount to pay the interest as the same might accrue on all its bonds, that a subsequent statute limiting the rate of taxation the city might impose for the purpose of paying such interest to a specified rate per cent., so far as it operated to prevent the levy of taxes sufficient to pay the interest as it accrued on the bonds issued before its passage, was unconstitutional.

The legislature can not change the agreed depositary of a sinking fund provided for the retirement of the

bonds of a municipality. *Liquidators* v. *Municipality*, 6 La. An. 21.

An act of the legislature authorized the creation of a debt by a municipal corporation, and provided for the collection and application of a portion of the municipal revenues to its payment. The Court held the act substantially established *a trust fund* for the benefit of the creditors to whom the debt was due, and that the legislature was not competent to change the terms of the contract as contained in the act. *People* v. *Bond*, 10 California, 653.

And see *People* v. *Wood*, 7 California, 579.

Where bonds were by statute to be a lien on real estate, and were passed to holders for value, it was held not competent for the legislature to divide such real estate, or provide for any disposition having the effect to discharge the lien on *any portion* of it. *Brooklyn Park Comm'rs* v. *Armstrong*, 45 New York, 234, 246, 247.

And see

Green v. *Biddle*, 8 Wheaton, 1.
Hawthorne v. *Calef*, 2 Wallace, 10.
Brownson v. *Kenzie*, 1 Howard, 311.
McCracken v. *Hayward*, 2 Howard, 608.
Riggs v. *Johnson County*, 6 Wallace, 166.
Butz v. *Muscatine*, 8 Wallace, 575.
Mayor v. *Lord*, 9 Wallace, 409.
Supervisors v. *Durant*, 9 Wallace, 415.
Gunn v. *Barry*, 15 Wallace, 610.
Edwards v. *Kearzey*, 96 U. S. 595.
Robinson v. *Howe*, 13 Wisconsin, 341.

All these cases involved laws more or less operating on the remedy.

A circumstance which strengthens the case of these creditors is the fact that they were, or at least all those who have judgments or have suits at law pending, were in

fact in the Circuit Court of the United States prosecuting their suits and endeavoring to get satisfaction of their debts at the very time the law repealing the charters of the city of Memphis was passed.

Section 20, article 1, of the constitution of Tennessee provides: "That no *retrospective* law or law impairing the obligation of contracts shall be made."

For the construction the State Court has put upon the first clause of this section, see

Fisher's Negroes v. *Dabbs*, 6 Yerger, 119, 138, 159–161, 162–167.

Jones v. *Perry*, 10 Yerger, 59, 79, 80.

Wally's Heirs v. *Kennedy*, 2 Yerger, 554.

Tucker v. *Burns*, 2 Swan, 35.

School Commissioners v. *The State*, 7 Humph. 113.

Gaines v. *Catron*, 1 Humph. 515.

Yancy v. *Yancy*, 5 Heiskell, 353, 357–365.

Richardson v. *Wilson*, 8 Yerger, 67, 79–83.

Van Zant v. *Waddell*, 2 Yerger, 260.

Hannum v. *Bank of Tennessee*, 1 Coldwell, 398, 400–403.

Greenfield v. *Dorris*, 1 Sneed, 548.

And for the construction of this Court, *Memphis* v. *United States*, 97 U. S. 293.

The Code of Tennessee, section 49, provides: "The repeal of a statute does not affect any right which occurred, any duty imposed, any penalty incurred, nor any proceeding commenced under or by virtue of the statute repealed."

The effect of this statute has been considered by the State Supreme Court in *Richardson* v. *The State*, 3 Coldwell, 122, and by this Court in *Memphis* v. *United States*, 97 U. S. 293.

And the general law as to the effect of the repeal of a

statute, independent of the Code, section 49, has been discussed in

Wood v. *Orr*, 10 Yerger, 505.

Hannum v. *The Bank of Tennessee*, 1 Coldwell, 398, 401–403.

United States v. *Heath*, 3 Cranch, 399.

McEwen v. *Den*, 24 Howard, 244.

Steamship Company v. *Joliffe*, 2 Wallace, 450, 456–458.

Memphis v. *United States*, 97 U. S. 293.

The policy of the State of Tennessee further appears by section 8, article 11, of the constitution of 1870, which provides: "No corporation shall be created, or its powers increased or diminished by special laws; but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter created, which laws may at any time be altered or repealed; *and no such alterations or repeal shall interfere with or divest rights which have become vested.*"

And see in this connection, *New Jersey* v. *Yard*, 95 U. S. 104.

VII.

Then, the creditors are to have a remedy equally as effective as that they possessed at the repeal of the city's charter, but how is it to be afforded?

It is familiar law that the share-holders of a private corporation can not be sued personally for the debts of the corporation, and that an execution on a judgment against a private corporation can not be levied upon the property of the stockholders. Angell & Ames on Corporations, secs. 41, 591 and 637.

It was decided in *Jewett* v. *The Thames Bank*, 16 Con-

necticut, 511, and no doubt is the law, that the doctrine applied in *Beardsley* v. *Smith*, 16 Connecticut, 368, to the inhabitants of towns and cities is not applicable to the members of private voluntary corporations, and that the private property of the members can not be taken for the satisfaction of a judgment against such corporations.

In *Russell* v. *The Men of Devon*, 2 Durnford and East (2 Term), 672, 673, which was nothing more than an action against a number of men, not incorporated, nor in any way associated, except by the mere fact that they all resided in the county of Devon, it was held the action could not be maintained. Lord Kenyon said:

"Where an action is brought against a corporation for damages, those damages are not to be recovered against the corporators in their individual capacity, but out of their corporate estate; but if the county is to be considered as a corporation, there is no corporation fund out of which satisfaction is to be made."

In England counties, it appears, were not corporations, nor do they appear to have been vested with the power of taxation for any purpose.

The doctrine of the case of *Russell* v. *The Men of Devon* is not applicable where the county or *quasi* corporation has the power of compulsory taxation. Cooley's Constitutional Limitations, 246, 247.

Ordinarily, and without a provision by statute, counties and similar political instrumentalities are not corporations, and can not be sued. Cooley's Constitutional Limitations, 247.

In Tennessee, and perhaps in all the American States, statutes provide that counties shall be corporations, or, at least, place them in the same position as municipal corporations, with respect to suing and being sued. Probably, too, they invariably have the power to levy taxes.

The case of *Emeric* v. *Gilman*, 10 California, 404, decides merely that the private property of an inhabitant of a county is not liable to seizure and sale under an execution at law for the satisfaction of a judgment recovered against such county.

The case of *Rees* v. *Watertown*, 19 Wallace, 107, declares the same to be the law, as to an incorporated city; and there can be no doubt that in the United States, outside of New England, a municipal corporation and its inhabitants are, in the view of the law, so entirely distinct from each other, that while the corporation exists *in law*—whether it is in a condition to be operated upon through its officers is not material—the private property of the individual inhabitants can not, either at law or in equity, be subjected to the payment of the debts of the corporation, except by the exercise of the power of taxation through the medium of the officers appointed by law, to levy and collect taxes.

The reasons for the law are that the power of taxation vested in the corporation is adequate for the payment of the debt, and if the corporation refuses to levy and collect the tax, and pay the debt, there is a complete remedy in theory, at least, by which it can be compelled to do so.

There are, also, considerations of convenience and inconvenience, which have their influence, as stated in the opinion in *Rees* v. *Watertown*. *Walkly* v. *Muscatine*, 6 Wallace, 481.

The law in the New England States, if not the common law of England, is different.

The case of *Beardsley* v. *Smith*, 16 Connecticut, 380, the Bridgeport case, decided:

1. That an execution on a judgment against a municipal body, may be levied upon and satisfied out of the

private property of an inhabitant or individual member of such corporation.

2. The members of such a corporation are, by law, considered as parties individually, as well as in the corporate capacities, to suits by or against the corporation, and are individually liable for its debts.

In this case the Court said: "Besides, we understand the plaintiff, upon this argument, to admit that under the taxing power of the city, his property could be legally taken and appropriated for the payment of these debts. The objection, then, is not so much that his estate has been taken for public use, as to the manner in which this has been done," p. 381.

In *Rees* v. *Watertown*, 19 Wallace, 119–120, to be stated more fully, further on, the Court remarked: "Upon the assumption that the individual property is liable for the payment of the corporate debts of the municipality, it is only so liable for its proportionate amount."

In *McLoud* v. *Selby*, 10 Connecticut, 390, where it was decided that the property of an individual corporator may be levied on and taken to satisfy a judgment against a school district, in the State of Connecticut, the judge delivering the opinion, said: "It was not denied in the argument that in England the property of the inhabitants of parishes, and all *quasi* corporations may thus be taken." 10 Conn. 395.

Referring to the distinction which exists between the personal liability, by the common law, of members of private corporations, and the members of public *quasi* corporations, Angell & Ames on Corporations, § 629, says; "With respect to the former we have already shown, that by the common law, no individual responsibility attaches to the members for the corporate debts, though the corporation may be sued for the recovery of them. A very differ-

ent rule prevails with regard to the inhabitants of any districts, as counties or towns, incorporated by statute, which come under the head of *quasi* corporations; for against them no private action will lie, unless given by statute; *and if a power to sue them is given by statute, each inhabitant is liable to satisfy the judgment.*"

See also section 35.

The law thus laid down is not, in ultimate results, different from that which requires taxation to be resorted to as the means of collection. In each mode the inhabitants, or those owning tangible property, are recognized as the the joint debtors. In the one the debt is several as well as joint, and any debtor individually may be made to pay the whole, while in the other, payment can be enforced from each only according to his personal equitable liability.

A lawyer might say the one system administers strict law, while the other proceeds according to the principles of equity. The first leaves the debtor paying more than his proportion, to call on his co-debtors for contribution. The other proceeds to do exact and equal justice, in the first instance, by calling for only each debtors share of the debt.

If the city of Memphis was still a corporation, and had the capacity to levy and collect taxes to pay its debts, I have no doubt its creditors would be confined to the appropriate remedy to compel it to pay them in that way.

VIII.

The corporation being now extinct, and hence incapable of itself to exercise the powers it formerly possessed to levy and collect taxes to pay its debts, and the creditors now before the Court having debts still due them, and having the right by the constitution of the United States to a remedy to collect their debts equally as efficacious as that they were entitled to during

the life of the city, and the city having been disintegrated, in what manner are the elements of which the city was composed to be acted upon so as to give the creditors the money due them, the ultimate fruit of their rights?

In contracting with a corporation purely private, or having a specified capital stock, which by law belongs separately to such corporation, and is pledged for the payment of its debts, creditors understand they look for their security to such capital stock, and that the members personally are not bound beyond their subscriptions thereto. The duty of the stockholders in such a corporation is to pay in the amount they are liable for, and the sums paid not only pass absolutely from the ownership of the persons paying them, but the aggregate of them and the accretions from them become a fund or property specially set apart for the purpose of insuring the performance by the corporation of whatever obligations it assumes. And such fund or property is by law not to be applied to any other purpose whatever until every such obligation is discharged. Not until such discharge can the stockholders lawfully withdraw any thing.

But how is it with a municipal corporation? How was it with the city of Memphis? There was never any specified capital stock in that corporation. There were never any subscriptions for stock. It can not properly be said there ever were stockholders. Hence there never was, as there is in the case of a private corporation, a fund or property belonging to the city exclusively and applicable only to the payment of its debts.

But while all this is so, it is a very plain proposition that those who contracted with the city of Memphis looked to something beyond the *mere legal existence*—the artificial being called the city—or what it possessed in its own right

as such ideal creature, as the ultimate security for the performance by it of its part of such contracts.

To what then did those entering into such contracts look, and to what had they a right to look, as the security that the city would perform its engagements?

I suppose no one will doubt the power of the government of the United States to levy taxes on every person and every piece of property within the National jurisdiction, nor the principle that the extent to which it may levy such taxes is without limit and a matter of arbitrary discretion. Nor can it be doubted that it is the legal as well as the moral duty of that government to levy such taxes even to the extent of absolute confiscation, if necessary in order to answer the legitimate demands of its creditors. It is upon this power and this duty those rely who become the creditors of the National Government, or enter into any sort of engagements with it. May not the same be truthfully said of a State, and of the municipal corporations in a State, which by law are permitted to contract obligations, and are given the power of taxation for the purpose of discharging such obligations? I think so.

And so I answer the question asked above, *to what did those entering into contracts with the city of Memphis look, and to what had they a right to look, as the security that the city would perform its engagements*, by saying they looked, and had the right to look, to every inhabitant of the city and to every other person owning property within the city, *to the extent of the whole value of all the property liable to taxation by the city, as such security.* Not only so, but all such property is absolutely pledged to them precisely in the same manner that the capital stock of a private corporation is pledged to its creditors. The taxable property occupies the place of the capital stock, and the owners of that property stand in the position of subscribers for capital stock,

and their liability is for their proportions of the debt of the city, to be ascertained thus: As the property they respectively own is to the whole taxable property, so is the amount they respectively are to contribute to pay the debt to the whole debt.

It has been seen that in every charter granted Memphis, whether as a town or city, the inhabitants of a certain territory, the bounds of which were invariably described, were constituted a body politic and corporate by a designated name, and most usually were given *perpetual succession* by that name.

In name, therefore, as well as in substance, the inhabitants constituted the aggregate mass of which the corporation was composed.

In 1 Willcock's Municipal Corporations, p. 326, sec. 852, it is said:

"As I apprehend it, the creation of a municipal corporation is the constituting of all the people of a certain place a body politic for the purpose of self-government, and the enjoying certain privileges and franchises which could not otherwise be enjoyed with equal conveniency; *a body which does not depend for its existence either upon the circumstance of having officers capable of administering their affairs, or the actual possession of those privileges or franchises.* If this principle be correct, and it is not unwarranted by the highest authorities, a corporation may be suspended and inert, but can not be dissolved, unless by the extinction of all, or at least by the surrender or misconduct of a majority of the people of the place. The Courts have often in some measure departed from this doctrine, in treating a corporation as composed only of officers and freemen, and not including the people of the place; but a very recent decision has, I think, fully substantiated my position. And perhaps the principles may thus be reconciled."

And again, p. 327, sec. 852 :

" *The people of the place are both formally and virtually incorporated;* certain only are admitted to the enjoyment of many franchises, fewer still are invested with offices, either of pre-eminence or government and power of regulating their affairs; *but the whole are presumed to have* an interest in the grant, that of being governed by the corporate body better than they had otherwise been, and, sometimes, of enjoying such privileges as the right of common."

In *Laramie County* v. *Albany County*, 92 U. S. 307, 310, this Court said, speaking of municipal corporations :

" Such corporations are composed of all the inhabitants of the territory included in the political organization, and the attribute of individuality is conferred on the entire mass."

Judge Dillon says: " In the United States, it is *the people* of the locality who are erected into a corporation. *The officers* do not constitute the corporation, or an integral part of it. In this respect municipal corporations resemble ordinary private corporations, which exist *per se,* and consist of the stockholders who compose the company." 1 Dillon's Municipal Corporations, sec. 110.

And see *Welch* v. *St. Genevieve*, 1 Dillon's C. C. R., 133, 134 ; Cooley's Constitutional Limitations, 243, etc.

Being composed of the inhabitants of the territory embraced within the limits of the corparation, it was but natural, indeed, was necessary, that upon the dissolution of the city of Memphis, the rights, the obligations, the duties and powers which belonged to it, so far as they were not destroyed by such dissolution, or were not otherwise lawfully disposed of by the legislature, should devolve upon and vest in those inhabitants as a mass, or the individuals composing that mass proportionally, as fully and completely as they were capable of transmission.

It is true that the primary purpose of the organization of muuicipal corporations does not necessarily require the creation of debts for which all the inhabitants are to become bound. It is true, also, that ordinarily, and without a specially delegated authority, such corporations can not contract debts or incur liabilities which become charges upon the inhabitants. But it is equally as true that the inhabitants, under the authority of the legislature, may confer on such corporations the power to contract debts or incur liabilities for them, or on their behalf, and when they have conferred such authority, and it has been exercised, and a debt has been created, the same results follow which ordinarily follow the doing by an agent of what is within the scope of his agency. In such cases, the inhabitants, as a whole, are the principal, and the corporation merely acts for them, and what it acquires or accomplishes is theirs, or is, or is presumed to be, for their benefit. The necessary consequence is that the burdens are theirs too, and, as a mass, they must pay whatever debt has been agreed upon between the corporation, their agent, and the other contracting party. Some of the debts the creditors now before the Court are seeking to recover from the city of Memphis, or its inhabitants, were contracted for stock subscribed in companies whose railroads lead to the city, some for pavements laid down on the streets of the city, and others for purposes equally for the advantage of all the inhabitants.

Why should not the inhabitants pay such debts? The benefits they derived from the performance by the other party of his part of the contract, they still retain, at least they have not restored them to those they received them from, nor have they been deprived of them—certainly not by any act of the creditors.

Why do the debts not adhere to the territory, formerly

the city of Memphis, or the people living or owning property in it?

On the division of a township against which there was a judgment, and the creation out of its territory of two townships, one of which was placed within a new county, the judgment creditor was decided to have the right to revive his entire judgment against each of the townships, but could have only one satisfaction.

Plunkett's Creek Township v. *Crawford*, 27 Penn. St. R. 107.

And see:

Gibson v. *Nicholson*, 2 Serg. & Rawle, 422.

North Whitehall v. *South Whitehall*, 3 Serg. & Rawle, 117, 120.

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After noticing the legislation which, on the annexation of Carrollton to New Orleans, imposed the liabilities of Carrollton on New Orleans, the Court, in *New Orleans* v. *Clark*, 95 U. S. 653, 654, said, citing *Broughton* v. *Pensacola*, 93 U. S. 266, as authority: "Independently of this legislation, the liabilities of Carrollton would have devolved with its property upon New Orleans on the annexation to that city, so far at least that they could be enforced against the inhabitants and property brought by the annexation within its jurisdiction."

In *Laramie County* v. *Albany County*, 92 U. S. 307, it was decided that where an act of the legislature organized two new counties out of portions of the territory of an existing county, leaving the old county still in existence, in the absence of all provision by the legislature on the subject, the old county exclusively remained responsible for its liabilities existing at the time of the partition of its territory, and the new counties were not chargeable with any portion thereof.

The suit was one for contribution by the old county against the new ones, and the rights of creditors were not considered. Whether a different rule would have been applied had *they* been seeking a recovery against the new counties, or whether, in the absence of proof of a positive injury, to wit, the loss of the whole or a part of their debts, as the necessary consequence of the creation of the new counties, they would not have been obliged to look exclusively to the old county, does not appear in the case. It seems quite probable that in the case supposed the doctrine the Court gave effect to in *Gilman* v. *Sheboygan*, 2 Black. 510, would have been applied. There, it not appearing the creditor was injured thereby, the Court held the legislature had the rightful power to exempt from taxation property subject to taxation by the city for the payment of the debt when it was created.

However, it is to be noticed that in the case of *Gilman* v. *Sheboygan* no creditor was complaining of the exemption of the property. And see *Wade* v. *Richmond*, 18 Grattan, 583.

It may be very difficult to reconcile the decision in *Laramie County* v. *Albany County* with such cases as *Plunkett's Creek Township* v. *Crawford*, 27 Penn. St. 107, and other similar cases cited above. But, if there is a conflict, it is not material here.

In the case before the Court there has been no division by the legislature of the territory or inhabitants on which the debts at the time they were made were charges. Memphis has not been partitioned. It remained entire until dissolved by the repeal of its charter, and then immediately the whole territory, formerly the city, and its inhabitants were erected into a taxing district, which the Supreme Court of Tennessee, in the case of *Luehrman* v. *The Taxing District*, 2 Lea, —, already referred to, has declared was

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nothing more than the creation of a new municipal corporation out of the same territory and same inhabitants that constituted the city of Memphis, and which new corporation was a successor to the former city of Memphis.

So all the territory and all the inhabitants of the city of Memphis are on a like basis, and the liability attaching to them must be exactly the same. The debts have followed them, and with the debts the necessity of submitting to taxation for their payment.

Ever since the year 1870 there has been a statute of the State of Tennessee exempting from sale under legal process all the property of municipal corporations owned for public purposes.

Act of 7th July, 1870, Acts of 1870, ch. 110.

Possibly the statute was only in affirmance of the pre-existing law.

Dillon on Municipal Corporations, sec. 446, and cases cited.

United States v. *Baltimore and Ohio Railroad Co.*, 17 Wallace, 322.

Bank of Tennessee v. *Dibbrell*, 3 Sneed, 179, and case referred to in Cooper's edition.

The proposition that the debts of municipal corporations are contracted to be paid exclusively out of taxes to be levied and collected by such corporations, is so generally true, that two other resulting propositions are now fully established: 1. That a municipal corporation can not lawfully create any debt unless the power to levy and collect a tax to pay such debt exists; and 2. That the authority to such a corporation to contract a debt carries along with it by implication in the absence of an express prohibition, the power to levy such taxes as are necessary to pay the debt.

Loan Association v. *Topeka*, 20 Wallace, 655.

United States v. *New Orleans*, 98 U. S. 381.
Cook v. *S. S. & M. Co.*, 1 Sneed, 698, 714, 715.
Newman v. *The Justices of Scott County*, 5 Sneed, 695, 700, 701.
Mayor v. *Dixon*, 8 Heiskell, 864, 871.

As a matter of fact the city of Memphis has not owned any property subject to execution at law for many years, and the executions issued on the various judgments of the complaining creditors have all been returned "no property."

In 1 Wilcock's Municipal Corporations, p. 137, sec. 318, it is said:

"By a by-law a talliage may be levied on the municipality to compel each member to furnish his proportionate share toward the necessary expenses to which the corporation is liable; such as the expense of keeping up beacons and watch towers in the Cinque Ports and ancient towns, and this may be done before they are actually in decay, for that must be prevented; or, the expense of erecting Courts for the reception of the judges, when the term is appointed to be kept in the town instead of at Westminster; or the expense of renewing the charter."

And again at page 139, section 326:

"Except in as much as all the members are liable to contribute to the general charges on the corporation, and the freeman of a company towards the support of it, the levy of a tax is illegal, and a by-law pretending to affect it is void; neither can the King expressly grant a power of this kind, for it is confined to the Parliament."

The statutes of Tennessee, already copied in this brief, or referred to, contain ample powers, expressly granted by the legislature of the State of Tennessee to the city of Memphis, to levy and collect taxes sufficient to pay each and every debt that is now being set up in this suit.

The powers of taxation so conferred were in existence when the several debts were created, and those debts must necessarily have been contracted with the understanding and upon the faith that those powers would be exercised, whenever occasion required, to levy and collect such taxes as might be necessary to discharge them.

The taxable property of the city is much more than sufficient to pay all the debts, and the exercise of the powers of taxation to the extent to which they have been conferred will certainly produce the money required to pay them.

The power to tax conferred upon the City of Memphis, extended to all the property within its limits, as well as to merchants, peddlers and privileges. Constitution of Tennessee of 1870, Art. II., secs. 28 and 29. Acts of Tennessee of 1870, ch. 50, 58, 59.

The extent to which the power to tax may be exercised on the subjects of taxation is unlimited.

In *McCulloch* v. *The State of Maryland*, 4 Wheaton, 316, 428, Chief Justice Marshall said:

"The power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it."

And again: "The power to tax involves the power to destroy." p. 431.

And see *Osborn* v. *Bank of U. S.*, 9 Wheaton, 738, 859, etc.

"The power of taxation may be carried to any extent to which the government may choose to carry it. In its very nature it acknowledges no limits." Cooley on Taxation, 3.

"If the right to impose the tax exists, it is a right

which in its nature acknowledges no limits. It may be carried to any extent within the jurisdiction of the State or corporation which imposes it, which the will of each State and corporation may prescribe." Chief Justice Marshall, in *Weston* v. *City of Charleston*, 2 Peters, 449, 460.

And see to the same effect—

Nathan v. *Louisiana*, 8 Howard,

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In *Gilman* v. *Sheboygan*, 2 Black, 510, 515, etc., the levying of taxes by a public or municipal corporation under the authority of a State law was said to be the exercise of the taxing power of the State, as much as the taxation of the citizens directly for the support of the State government.

And see *Knowlton* v. *Supervisors*, 9 Wisconsin, 410.

In the case of the *United States* v. *Baltimore and Ohio Railroad Co.*, 17 Wallace, 322, the Court decided that "A municipal corporation is a portion of the sovereign power of the State, and is not subject to taxation by Congress upon its municipal revenues," and that "municipal reve-

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nues are to be regarded as revenues of the State." 17 Wallace, 329, 332.

And see *Hope* v. *Deaderick*, 8 Humph. 1, 9, 10.

2 Dillon's Municipal Corporations, sec. 613.

Now in the light of these principles and authorities, I believe I may safely repeat that the creditors of the city of Memphis have, in law, the indisputable right to have the entire taxable property of the city, of every description, applied to the payment of their debts.

Having arrived at this point, it is not unreasonable to conclude as the Court in substance remarked in *Beardsly* v. *Smith*, 16 Connecticut, 381, that the difference betwen the law as declared in that case, and the American law in general, as to the liability of the inhabitants of a municipal corporation to have their property appropriated to the payment of its debts is rather one of form than substance. In the one case the judgment against the corporation is executed directly upon the property of the inhabitants, while in the other the machinery of the corporation is employed to accomplish the same result through the medium of taxation.

IX.

Then as it is the power of taxation which is to be brought to bear upon the inhabitants of Memphis in order to give its creditors the remedy they are entitled to for the collection of their debts, how is that power to be put in motion?

In *Milner's Adm'r* v. *Pensacola*, 2 Wood's C. C. 632, the Court said, that the dissolution of a municipal corporation "puts an end to its power of taxation, and renders the collection of debts owing by it an impossibility." See p. 641.

If by this is meant only that the corporation no longer

is provided with the agencies necessary to levy and collect taxes, and thereby pay its debts, the proposition is self-evident.

It is very plain that if the corporation is abolished, and has no officers, it can not voluntarily levy and collect taxes, nor is there any one upon whom a Court of law can act by *mandamus*, or any other process, to compel performance of that duty.

In other words, here is a case where the creditors have no remedy at law.

But I wholly deny that the dissolution of a municipal corporation "renders the collection of debts owing by it an impossibility." Indeed, it appears to me, the dissolution facilitates the collection, just as it does in the case of other corporations.

It may be, Judge Woods meant to confine his remark to collection *through a Court of law*, and if so, I agree with him, and propose to argue to maintain his proposition.

In *Von Hoffman* v. *Quincy*, 4 Wallace, 535, a city corporation, with all its machinery complete, the same in existence when the bonds involved were issued, was in being, and was subject to the process of the Court, and was capable of being put in action, by the authority of the Court, for the purpose of levying and collecting taxes, and satisfying the debt.

There had been no interference with the existence of the corporation, and, indeed, no attempt directly to take away the power to levy and collect taxes, but only such a limitation of it as to render it practically inadequate to the payment of the bonds within any reasonable time after the rendition of the plaintiff's judgment.

It is plainly to be seen how the remedy at law in that case was adequate and complete, and how that case differs from this.

And so in *Memphis* v. *United States*, 97 U. S. 293, where the statute allowing the levy and collection of the tax had been repealed, the municipal corporation was left in full vigor, with all the machinery to levy and collect taxes it had ever possessed.

In *Supervisors* v. *Rogers*, 7 Wallace, 175, it was held, that a Court of the United States may, in a particular case, adopt a State law providing for the appointment of a commissioner to levy and collect a tax in satisfaction of a judgment, where the proper authorities refuse to levy it, and may make the marshal such commissioner. p. 180, 181.

In *Welch* v. *St. Genevieve*, 1 Dillon C. C. 130, 138, Judge Dillon decided the Circuit Court of the United States had the power to appoint the United States marshal to levy and collect a tax to pay a judgment against a municipal corporation, where there were no corporate officers in existence authorized to levy and collect such tax.

But in *Rees* v. *Watertown*, 19 Wallace, 107, 118, this Court expressly disapproved that case, and distinguished *Lansing* v. *Treasurer*, 1 Dillon C. C. 522, and *Supervisors* v. *Rogers*, 7 Wallace, 175, which it said proceeded under the authority of an express statute of Iowa, which conferred the power to appoint a commissioner with power to levy taxes where the officers, whose duty it was to levy them, have failed after a peremptory *mandamus* requiring them to make such levy.

In *Amy* v. *The Supervisors*, 11 Wallace, 136, the Court held an action by a creditor could lie against the persons in office, having the power and whose duty as officers it was to levy and collect a tax to pay a judgment against a municipal corporation, for failure to do so, and that damages might be recovered in such case.

But a subsequent decision held, in effect, that only

nominal damages could be recovered, as the power to levy and collect the tax and pay the judgment still remained, and the exercise of it might be compelled by the creditor in a proper application.

But it is evident that this remedy, whatever its effectiveness may be, is not a remedy against *the corporation* or *the inhabitants*, and therefore can not be regarded as a remedy at law to which the creditors might have resorted.

X.

The liability of the Taxing District as the successor of the city of Memphis—Its effect on this suit—Whether it is to levy taxes to pay the debts of Memphis.

It has been noticed that the Supreme Court of Tennessee has decided, in *Luehrman* v. *The Taxing District*, that the city of Memphis has been abolished, and that the taxing district is a new municipal corporation, created out of the same territory and the same people, and, in effect, is merely the successor of the city of Memphis.

The well-established general rule, no doubt, is that a municipal corporation erected out of the territory of a former municipal corporation and embracing the same people, succeeds to all the rights of the former, and is subject to all its debts and liabilities.

Wheaton's International Law, sec. 30, says:

"As to public debts—whether due to or from the State—a mere change in the form of the government, or in the person of the ruler, does not affect their obligation. The essential power of the State, that which constitutes it an independent community, remains the same—its accidental form only is changed. The debts being contracted in the name of the State by its authorized agents for its public

use, the nation continues liable for them, notwithstanding the change in its internal constitution. The new government succeeds to the fiscal rights, and is bound to fulfill the fiscal obligations of the former government."

In *Broughton* v. *Pensacola*, 93 U. S. 266, 269–271, this doctrine is applied to the case of the abolition of a municipal corporation and the creation of a new one embracing the same territory and inhabitants.

See also *Milner's Adm'r* v. *Pensacola*, 2 Woods C. C. 632, approved by the Supreme Court of the United States in 93 U. S. 270.

The application of the principle to the State of Tennessee, as regards its liability for the notes of the Bank of Tennessee issued during the rebellion, is considered in *Keith* v. *Clarke*, 97 U. S. 454, 459–463.

Judge Dillon says:

"The name of an incorporated place may be changed, its boundaries enlarged or diminished, and its mode of government altered, and yet the corporation not be dissolved, but in law remain the same." 1 Dillon's Munic. Corp., sec. 115. And see also sec. 52.

The *Mayor of Colchester, etc.* v. *Seaber*, 3 Burrow's R. 1866, was as follows:

Colchester was an incorporated borough, and a bond payable to it was made by Seaber. There was then a judgment of ouster against all the officers of the corporation. All such persons then died. For twenty-three years no person in fact took upon himself or claimed to be mayor or alderman of the corporation. At the end of twenty-three years a new charter was granted and accepted, and an organization was effected and continued under it. The corporation then sued Seaber on the bond. The Court held it could maintain the action. The syllabus is: "A corporation disabled to act, taking a new charter, becomes a corpora-

tion again the same as the old one." In deciding the case, Lord Mansfield said: "Where the question has arisen upon any remarkable metamorphoses, it has always been determined 'that they remain the same as to *debts* and *rights*.'" p. 1870. Justice Wilmot said: "Wherever a corporation accepts a new charter, it *remains*, to every intent and purpose as it did before, *though* the name be altered." p. 1871. Justice Yates said: "Old rights must remain; it would be very unreasonable if it should be otherwise." p. 1872. Justice Aston said: "Though a new charter should grant *new rights*, or a *new name*, yet the acceptance of it does *not* destroy the former rights, privileges, or franchises of the corporation; but the corporation may use and enjoy them as they did before." p. 1873.

Judge Dillon repeats the doctrine of *Colchester* v. *Seaber*, 1 Dillon's Munic. Corp., sec. 116.

And see:

Olney v. *Harvey*, 50 Illinois, 453.

Girard v. *Philadelphia*, 7 Wallace, 1, 12, 13.

Thompson v. *Abbott*, 61 Missouri, 176.

In order to avoid the effect of this principle, the legislature, in the act creating the taxing district, has provided: "Nor shall the said commissioners, or said trustee, nor the local government created by this act, pay or be liable for any debt created by said extinct corporation, nor shall any of the taxes collected under this act ever be used for the payment of any of said debts." Sec. 12, ch. 11, p. 25, of the Acts of Tennessee of 1879.

That the legislature had not the power to relieve the inhabitants of the city of Memphis of liability to pay the debts of the city is a proposition I have already argued.

Whether, after the abolition of the city, it had the power to erect a new municipal government in its stead, and, in contravention of the established principle, above

referred to, to provide that such new government should not pay or be liable for any debt created by the city, is perhaps not a very different question from the one already discussed, especially since by section 14 of the act, p. 25, 26, the legislature undertook to transfer and to vest in the new government all the property before used by the city of Memphis.

A more serious question, however, is presented one step further on. It will, of course, be idle to cast the debts of the city of Memphis on the taxing district, unless that government has the means, or the power to provide the means, with which to pay them. The creditors may as well have *no* debtor as *such* a debtor.

After declaring in the repealing act (Acts of 1879, ch. 10, sec. 4, p. 15) that "all power of taxation, in any form whatever, heretofore vested in or exercised by the authorities of said municipal corporations . . . is forever withdrawn and reserved to the legislature," in the act creating the taxing district (Acts of 1879, ch. 11), it is provided that "the necessary taxes for the support of the government thus established shall be imposed directly by the general assembly, . . . and not otherwise." Sec. 2, p. 16.

The ninth section of the act, p. 23, then proceeds to levy a specified annual tax for the purposes of the government created by it.

Then, by section 12, p. 25, the commissioners and the county trustee and other governing agencies employed by the act "are expressly prohibited from levying any taxes for any purpose, that power being reserved to the legislature; and no writ of *mandamus* or other process shall lie to compel them to levy any taxes."

By section 12, p. 25, also, no property held by the commissioners for public use "shall ever be subject to execu-

tion, or attachment, or seizure, under any legal process, for any debt created by said commissioners."

It is settled that a Court of the United States will not by *mandamus* compel the officers of a State to do acts not authorized by the laws of the State from which they derive their powers. *Supervisors* v. *United States*, 18 Wallace, 71, 77.

The same principle is, of course, true in the Courts of the States.

It is, therefore, for this Court to determine whether the power of taxation for the purpose of paying the debts owing by the city of Memphis have devolved upon and are to be exercised by the taxing district government, or the said government, being merely the creature of the legislature, must be confined to the exercise of such powers as the legislature has *in terms* conferred upon it.

If the latter alternative is true, then as there is an express prohibition to levy taxes to pay the debts of the city, or to apply any taxes collected under the act to that purpose, it is quite clear there is no way to compel the taxing district government to levy such taxes or pay such debts.

But it has been seen that the legislature, having conferred the power of taxation on the city of Memphis as the means of paying its debts, had not the right to withdraw that power while those debts remained unpaid. Now, assuming the validity of the act abolishing Memphis as a municipal government, and the validity of the act estabing the taxing district, which, as the Supreme Court of Tennessee has decided, was only the creation of a new municipal corporation composed of the same territory and inhabitants, and virtually a successor of the city of Memphis, the question is whether the legislature had the constitutional power, consistently with its obligation to the creditors of the city of Memphis, to withhold from the

taxing district government the same powers of taxation the city of Memphis possessed, so far as those powers are necessary for the payment of the city's debts. And whether the legislature, having provided no other agency to exercise those powers of taxation for the said purpose, they have not been, in express contradiction of the will of the legislature as declared in the act, to the extent necessary to pay the debts, impliedly vested in the taxing district government, and are not to be exercised by it in like manner and to the same extent as the city of Memphis would or could have exercised them had it not been abolished.

The specific powers of the taxing district government, except as regards the power of taxation, are as full and ample as are usually conferred on municipal corporations. Secs. 3-8, 16, 18 of the act.

In the first place, section 1, page 16, declares the taxing district is created "in order to provide the means of local government for the peace, safety, and general welfare of such district."

The "agencies and governing instrumentalities" established by the act are declared to be for the purpose of "administering the affairs and providing the means of local government in said district. Sec. 2, p. 16.

The board of fire and police commissioners, it is declared, "shall have power over all other affairs in the taxing district in which the peace, safety, or general welfare of the inhabitants is interested." Last clause of sec. 3, p. 19.

By section 4, page 19, "the legislative council," as established in subsection 2, section 2, page 16, consisting of "the commissioners of the fire and police board and the supervisors of the board of public works," is "vested with the power and charged with the duty of making all laws or ordinances not inconsistent with the general laws, for

every object, matter, and subject within the local governments instituted by the act."

If these provisions stood alone, without the restrictions on the power of taxation contained in other portions of the act, I believe the Court would have no difficulty in deciding they conferred on the legislative council the same power to levy and collect taxes to pay the debts of the city of Memphis the city before its abolition possessed. Unquestionably it was the duty of the legislature—the obligation it was under to the city's creditors required it should, upon the destruction of the city, confer upon its successor, the government of the taxing district, *just such power.*

As clearly it was *not* its duty—was a wanton disregard of legal as well as moral obligation, and a palpable breach of the provisions of the constitution of the United States and the State, forbidding the State to pass any law impairing the obligation of contracts, to withhold from the taxing district government, so far as its exercise was necessary for the payment of the debts the city of Memphis owed, the same power of taxation that had been vested in the city of Memphis.

It comes down, therefore, to this: Will the Court regard the general grant of power, evidently broad enough to authorize the taxation necessary to pay the city's debts, conferred by the legislature in the discharge of a high duty, and give effect to it as if unrestrained, or will it, in aid of the immoral, illegal, and unconstitutional object of the restriction (as apparent as if avowed), to enable the people of Memphis to repudiate and avoid the payment of the debts they justly owe, limit the general grant of power, and give effect to the restriction, by holding the power of taxation to pay the debts of the city of Memphis to be excluded from the general powers conferred on the Taxing District Government?

It occurs to me, the Court will not have much difficulty in deciding such a proposition.

But, should the Court decide the power to levy taxes to pay the debts of the city of Memphis is in the Government of the Taxing District, it will by no means follow that the creditors are to be turned out of this Court, and left to pursue the remedy to compel, in a Court of law, the exercise of that power.

There is at least doubt enough about the correctness of the principle, to wit, that such power of taxation exists, and that its exercise may be compelled by remedy at law, and difficulty enough in making the remedy at law adequate, complete, and speedy, if it exists, to justify the creditors in resorting for relief to the Court of equity in the first instance.

But the case of the creditors here is stronger even. They had the right to come into Court here to have the taxes already levied by the city of Memphis, and uncollected, collected and applied to the payment of their debts. At least, they certainly had the right so to come as far as regards the taxes levied specially to pay their particular debts. Upon such taxes they have a specific lien, and it is competent for a Court of equity to enforce such lien, and to give effect to it by having the taxes collected and appropriated to the payment of the proper debts. In bringing such a suit, that is a suit having for its object the collection of the back taxes and their application to the payment of their debts, the creditors have necessarily brought before the Court the city of Memphis, the Taxing District (its successor), and all the inhabitants of the territory composing each, as defendants. They are the same, and indeed *all* the parties who can have any interest in the levy and collection of further taxes for the payment of the debts the city of Memphis owes. It will be a part of the duty of the Court, in disposing of the case, so far as it has reference only to past

due taxes, to ascertain and fix the debts due the creditors respectively. The balance required to be raised by further taxation will necessarily appear by the deduction of the sums realized by the collection of the taxes already levied from the amounts of the debts as fixed. To ascertain such balance, and the rate of taxation necessary to produce it, will be merely a matter of mathematical calculation. And to enforce the levy and collection of the taxes necessary, will be as easy and practicable in this as in any other suit.

Therefore, having jurisdiction to give relief as to the past due taxes, carries with it the right to give relief so far as it may be necessary to do so by further levies.

In his Equity Jurisprudence, Judge Story says:

"Having rightfully obtained jurisdiction, the Court will make it effectual for all the purposes of complete relief in the case." 1 Story's Eq. Jur., sec. 64*k*.

And again:

"If originally the jurisdiction has properly attached in equity, in any case, such jurisdiction will not be relinquished because some other Court may have jurisdiction of the case." 1 Story's Eq. Jur., sec. 64*i*.

"The case" here, of course, is the suit by the creditors to recover their entire debts—not a part of them.

In *Lyell* v. *Supervisors*, 3 McLean C. C. 580, it was held that on the return of *nulla bona* on an execution on a judgment against a county, a creditor's bill to subject bonds and mortgages belonging to the county to the satisfaction of the judgment might be maintained in the Circuit Court of the United States in equity against the county, notwithstand it was the duty of the supervisors of the county on the recovery of the judgment to levy the amount on the people of the county, and the performance of that duty might be enforced by mandamus.

In *Morgan* v. *Beloit*, 7 Wallace, 613, this Court held

* Allen v. Gallagher 93 U. S. 198

that *mandamus*, though it might lie in that case, was not the *only* remedy the plaintiffs, the bondholders, had a right to in order to compel the city and town to pay the bonds. p. 618, 619.

In *Heine* v. *The Levee Com'rs*, 19 Wallace, 655, there had been—

(1) No judgment at law, nor even a suit at law against the corporation.

(2) There had been no dissolution of the corporation.

The plaintiff's case was he held certain bonds, which were unpaid, and it was the duty of the levee commissioners to pay them by taxation, which they had not done, and which the plaintiff could not by a suit at law compel them to do, because they had resigned; and the judge of the District Court, who was by statute authorized to levy the tax to pay the bonds, if the levee commissioners failed to do so, had also failed to levy them.

The suit was in equity to compel the levee commissioners to assess and collect the tax, and if they failed to do so, that the district judge be ordered to assess and collect them.

The relief was denied on the ground: (1) The plaintiff's remedy at law had not been exhausted; (2) The United States Circuit Court had no power to issue a *mandamus* to compel the levy of a tax to pay a debt, until there had been judgment in that Court for the debt.

There is certainly nothing in the decision not perfectly consistent with every position taken in this brief. There may be general expressions which would admit of a construction conflicting with portions of the argument. But it could not have been the intention of the justice delivering the opinion to apply them to a case like the present. See p. 655, 657.

Rees v. *Watertown*, 19 Wallace, 107, was a suit in equity.

There had been a judgment at law, on which it appeared no money could be realized. But the corporation had not been abolished, but, *as a matter of law*, was in full life, and professedly, at least, was in the exercise of its corporate powers. By resignation and other devices the members of the municipal legislature avoided the service of a writ of *mandamus*, and so in fact, the plaintiff was not able to collect his debt through the agency of that writ. The object of the bill was to compel the inhabitants as individuals to pay the judgment against the city.

The Court denied the relief. It declined subjecting individual property to the payment of the judgment without the intervention of the taxing officers, because—

(1) A statute of the State of Wisconsin, a part of the charter of Watertown, declared that the individual property of the inhabitants should not be taken for the satisfaction of the debts of the city. 19 Wallace, 120.

(2) Another statute of the State empowering the city to levy and collect a tax to pay the judgment, and which was in full force, had, in point of law, provided a complete and adequate remedy; and the fact that such remedy was *illegally* obstructed, while it remained in full legal force, afforded no ground for a Court of equity to interpose and grant relief.

It was also argued that the citizens had not been heard in Court, and had been afforded no opportunity to establish a defense to the debt itself, or, if the judgment was valid, to show that their property was not liable to its payment 19 Wallace, 122, 123.

But, as elsewhere is argued more fully, I take it the judgment concluded the citizens as to the validity of the debt—at least this Court has several times so decided, and if they had any such defense as that their property was not liable to the satisfaction of the judgment, the very object of the bill was to bring them before the Court that they

might then and there set it up in defense of that particular suit. I assume, therefore, that this could scarcely have been a ground of the decision.

In answer to the position that the Court could appoint the marshal to levy and collect the tax, the Court said there was no statute of Wisconsin conferring such power, and hence the Court could not exercise it. That, in the cases of *Supervisors* v. *Rogers*, 7 Wallace, 175, and *Lansing* v. *The Treasurer*, 1 Dillon C. C. 522, where that course was pursued, there was a statute authorizing it. And that the case of *Welch* v. *St. Genevieve*, 1 Dillon C. C. 130, where there was no such statute, was disapproved.

Now, of this case, I think I may say no part of the decision conflicts with any part of the theory on which the case of the creditors of the city of Memphis, as presented to the Court, proceeds.

In *Cohens* v. *Virginia*, 6 Wheaton, 399, the Court said:

"It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, where the very point is presented. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and is considered in its full extent; other principles, which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

The Court, in *Carroll* v. *Carroll's Lessee*, 16 Howard, 275, 287, quoted and approved what the Court said in *Cohens* v. *Virginia*.

The case of *Walkley* v. *Muscatine*, 6 Wallace, 481, is not at all in our way. There the city corporation was in existence, had the necessary organization and officers, the

necessary power to levy taxes, and was bound by law to levy the tax to pay the judgment of the plaintiff, and the remedy at law, by *mandamus*, to compel the levy of the tax, upon the refusal of the city to levy it, was complete and adequate. Upon this state of facts and law, the Court declined to entertain a bill in equity, to compel the city to levy the tax to pay the plaintiff's judgment, because he had a sufficient remedy at law.

The case of *Barkley* v. *The Levee Commissioners*, 93 U. S. 262, was a suit at law and not in equity. The only question in the case, as stated by Justice Bradley, who delivered the opinion, was whether, upon the state of facts he had detailed, a *mandamus* could be issued, to compel the surviving commissioners of the old levee board, or the police juries of the parishes of Madison and Carroll, which parishes together composed the district of the old levee board, to assess a tax upon the property in the said former levee district, to pay the judgments in question; or, if not, whether the Circuit Court of the United States could direct the marshal to assess such tax. p. 262.

This question the Court answered in the negative, and that is all there is of the case.

The reasons given by the Court why the *mandamus* could not issue, were: 1. The old board of commissioners had ceased to exist, by reason of the expiration of the terms of office of the commissioners, and the failure to provide for the election or appointment of their successors; wherefore, they had no power to levy taxes; 2. The police juries of Madison and Carroll parishes had *never* been empowered to assess and levy the tax desired; they could not act in concert, but must act separately, and could not assess and levy a uniform tax; and, 3. The marshal could not assess and levy the tax, because there was no provision of law, State or federal, authorizing him to do so.

This case goes far toward deciding that, in a case like the present, there is no remedy *at law* for the creditors.

If this were the case of a private corporation, there would not be a question of doubt in the whole case.

There is really no substantial ground of difference in principle between the case as it is and the case as it would be were a private corporation involved, instead of a municipal corporation.

It has been said frequently, in effect, in the cases that a municipal corporation, with respect to its debts and liabilities, and its subserviency to the judicial proceedings provided to enforce them, stands precisely where a private corporation does. Also, that the State is as powerless to affect by its legislation the rights and remedies of creditors against municipal corporations as against private corporations or individuals.

And further, and as applicable specifically to cases like the present, that the legislature having granted a municipal corporation the power to levy and collect taxes for the purpose of discharging a debt, and the corporation having made a debt on the faith of its exercise of that power as a means of payment, the legislature can not withdraw, nor even curtail that power, so as to affect its exercise for the purpose of paying that debt.

All this can mean nothing—is mere verbiage—if in a case like the one now before the Court, it *does not* mean that the power of taxation—or some equivalent power, call it by what name you will—shall be exercised by the proper Court, or through some agency provided by the Court, to the same extent and with the like effect, to all intents and purposes, as it would have been or might have been exercised by the city of Memphis before the repeal of its charter for the purpose of paying the debts due the creditors who are suing.

In what other way, let me ask, are they to get their money? And how else are they to be protected in the guaranty of the Constitution that no law passed by the State shall impair the obligation of their contracts?

In *Boyce* v. *Grundy*, 3 Peters, 210, 215, in laying down a general rule to define the class of cases in which equity would entertain jurisdiction, though there might be *some* remedy at law, the Court said: "It is not enough that there is a remedy at law—it must be plain and adequate, or, in other words, as practical and as efficient to the ends of justice, and its prompt administration, as the remedy in equity." Repeated by the Court in *Morgan* v. *Beloit*, 7 Wallace, 618.

"Where the case is only new *in the instance*, and the only question is upon the application of a principle recognized in the law to such new case, it will be just as competent to courts of justice to apply the principle to any case that may arise two centuries hence as it was two centuries ago." Broom's Legal Maxims, *182, 183.

This Court, in the case of *Commissioners of Knox County* v. *Aspinwall*, 24 Howard, 376, found no difficulty in affording, consistently with the established rules of law, a summary remedy by *mandamus*, hitherto unknown, at least unpracticed, in the federal Courts, to compel a municipal corporation to levy and collect taxes to pay a judgment a federal court had rendered against it. Subsequently, when the legislature of a State gave its sanction to the refusal of the officers of a similar corporation to levy taxes which it was their duty to levy to pay a like judgment by repealing the statute conferring the power to levy the taxes, this Court found ample power to compel those officers to perform their duty, notwithstanding the action of the legislature. *Von Hoffman* v. *Quincy*, 4 Wallace, 535. And later still, when the Courts of a State intervened, and in a suit of

which they had jurisdiction, perpetually enjoined the officers, whose duty it was to levy taxes in similar cases, from levying *those purticular taxes*, this Court held such injunction was no obstacle to the exercise by the officers of the power for the purpose of levying taxes to pay the judgment. *Riggs* v. *Johnson County*, 6 Wallace, 166.

And can it be truthfully said that in a case like this, there is consistently with the established rules of law, and the forms of administering justice in the Courts of the Nation, *no remedy* for creditors of a municipal corporation circumstanced as the creditors of the city of Memphis are?

In *Sawyer* v. *Upton*, 91 U. S. 56, 60, 61, the Court said:

"The capital stock of an incorporated company is a fund set apart for the payment of its debts. It is a substitute for the personal liability which subsists in private copartnerships. When debts are incurred, a contract arises with the creditors that it shall not be withdrawn or applied otherwise than upon their demands until such demands are satisfied. *The creditors have a lien upon it in equity.* If diverted, they may follow it as far as it can be traced, and subject it to the payment of their claims, except as against holders who have taken it *bona fide* for a valuable consideration and without notice. It is publicly pledged to those who deal with the corporation for their security. Unpaid stock is as much a part of this pledge, and as much a part of the assets of the company, as the cash which has been paid in upon it. Creditors have the same right to look to it as to any thing else, and the same right to insist upon its payment as upon the payment of any other debt due to the company. As regards creditors, there is no distinction between such a demand and any other assets which may form a part of the property and effects of the corporation."

Language meaning substantially the same thing is employed by the Court in *Railroad Company* v. *Howard*, 7 Wallace, 409–411.

In *Broughton* v. *Pensacola*, 93 U. S. 266, 269, the Court said:

"A court of equity will now lay hold of the property of a dissolved corporation, and administer it for the benefit of its creditors and stockholders. The obligation of contracts made while the corporation was in existence survives its dissolution; and the contracts may be enforced by a court of equity so far as to subject for their satisfaction any property possessed by the corporation at the time. In the view of equity its property constitutes a trust fund pledged to the payment of the debts of creditors and stockholders; and if a municipal corporation upon the surrender or extinction in other ways of its charter is possessed of any property, a court of equity will equally take possession of it for the benefit of the creditors of the corporation."

It is true the bill failed in *Broughton* v. *Pensacola*. But it was put on the ground, first, that there had in fact been no dissolution of the corporation of Pensacola, but only the creation of a new corporation which had taken the place and assumed all the liabilities of the old, and was compellable by a suit at law and a *mandamus* based on a judgment in such suit, just as the old corporation had been, to levy a tax and pay the plaintiff's debt, wherefore it was not necessary to resort for relief to a court of equity. And, secondly, the plaintiff had alleged, and the Court assumed the fact to be, that the old corporation of Pensacola had *no property*.

In *Ogilvie* v. *The Knox Ins. Co.*, 22 Howard, 380, a bill in equity by judgment creditors of an insolvent corporation to compel the stockholders to pay the sums unpaid on their

stock subscriptions for the satisfaction of their judgments was maintained, and it was held not necessary to make *all* the creditors or *all* the stockholders parties to the suit.

In *Sanger* v. *Upton*, 91 U. S. 56, referred to above, it was held:

(1.) That the District Court of the United States having adjudged a corporation bankrupt had jurisdiction to make a call for the unpaid stock due by the stockholders on their subscriptions, just as the directors under the direction of the stockholders might have done before the adjudication of bankruptcy, and to require the payment of the same to the assignee in bankruptcy.

(2.) That the assignee in bankruptcy might maintain an action at law to recover a balance due from a stockholder on his subscription for stock.

(3.) That the stockholders were before the Court, in contemplation of law, in all the proceedings touching the corporation, and were not entitled to notice before the making of the order requiring the payment of the balance due on the stock to the assignee in bankruptcy.

(4.) And that the order of the Court requiring the payment of the balance due on the stock was conclusive as to the right of the assignee to bring suit to enforce such payment.

(5.) The capital stock of an incorporated company is a fund set apart for the payment of debts.

And see

Pullman v. *Upton*, 96 U. S. 328.

Turnbull v. *Payson*, 95 U. S. 418.

Sawyer v. *Hoag*, 17 Wallace, 610, 620–622, is to the same effect.

Barings v. *Dabney*, 19 Wallace, 1, proceeds on the same principle.

And see—

Curran v. *The State of Arkansas*, 15 Howard, 304.

Wood v. *Dummer*, 3 Mason C. C. 308.

Marr v. *The Bank of West Tennessee*, 4 Coldwell, 471.

Bacon v. *Robertson*, 18 Howard, 480.

Broughton v. *Pensacola*, 93 U. S. 266, 268–271.

1 Dillon's Mun. Corporations, secs. 113, 114, and cases cited.

The jurisdiction of a court of equity to wind up the affairs of a dissolved corporation and administer its assets as a trust fund applicable, first, to the payment of the debts it owes, and then to be distributed among the stockholders, *pro rata*, may be regarded as firmly established.

2 Story's Eq. Jur., sec. 1252.

Angell & Ames on Corporations, sec. 599, 600, etc.

The statutes of Tennessee, as already seen, have provided a similar remedy. Code, secs. 3409–3431, 4294, 4295.

And the law there is the same independent of the statutes. *Marr* v. *The Bank of West Tennessee*, 4 Coldwell, 471.

It is queried in *Terry* v. *Anderson*, 95 U. S. 628, 636, whether creditors, whose demands are not in judgment, can proceed in equity against the assets of a dissolved corporation for the payment of their debts.

And it is intimated that they may on the ground that the assets of a corporation are a trust fund, which will be administered by a court of equity in the absence of a trustee.

In this case, most of the creditors have judgments, and the question is not very material. If it were, I should insist very confidently that the Courts of the United States, sitting in equity, if not given the authority otherwise, would entertain these bills under the provisions of the statutes of Tennessee (see secs. 3431, 4294, 4295, etc.), and give relief.

Case of Brodericks Will 21 Wallace 503, 517–518

In *Ex parte McNeal*, 13 Wallace, 236, the following proposition was decided:

Although a State statute can not confer jurisdiction on a federal Court, it may yet give a right to which, other things allowing, such Court may give effect.

And in the opinion it is said: "A State law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties the right may be enforced in the proper federal Court of equity, of admiralty, or common law. . . . This principle may be laid down as axiomatic in our National jurisprudence." p. 243.

In *Railway Co.* v. *Whitton*, 13 Wallace, 270, it was decided: "Whenever a general rule as to property or personal rights, or injuries to either, is established by State legislation, its enforcement by a federal Court in a case between proper parties is a matter of course, and the jurisdiction of the Court in such cases is not subject to State limitations." p. 285–287.

And see *Supervisors* v. *Rogers*, 7 Wallace, 175.

XI.

Power to Levy Taxes a Trust.

The exact point decided in *Peter* v. *Beverly*, 10 Peters, *532, is, that "where a benefit by way of trust is to be conferred by the execution of a power, the power does not become extinct by the death of *one* of the trustees."

The law is equally as well settled that the death of *all* the trustees does not extinguish the power where a benefit by way of trust is to be conferred by its execution; but the Court of Chancery, on the application of the party
88 interested in the exercise of the power, will appoint new trustees, or proceed in the proper way to carry the power

into effect. See 10 Peters *564, and following, and cases cited.

In the very recent case of *Adams* v. *Adams*, 21 Wallace, 185, 192, it is laid down generally that a trust can not fail for want of a trustee; that, if necessary, a court of equity will appoint a trustee, or will itself execute the trust.

And see 2 Story's Eq. Jur., secs. 1060–1062.*

Why, I ask, is the power to levy and collect taxes to pay the debts due the creditors severally who are seeking in this suit to have satisfaction, vested as we have seen it was in the former municipal corporation of the city of Memphis, and vested irrevocably so far as concerned those debts, why is it not a trust? And why will not this Court, the trustee having been destroyed, and thereby incapacitated to execute the trust, on this application of the parties interested, appoint a new trustee for the purpose, or else, if more proper, proceed itself to execute the trust?

All through the case of *Railroad Company* v. *Howard*, 7 Wallace, the corporation involved there—a railroad company—was treated as the trustee of the creditors and stockholders. See p. 411, etc.

In *Montpelier* v. *East Montpelier*, 29 Vermont, 12, it was held that where a municipal corporation had been abolished by the legislature, and such corporation was the trustee of certain rights of land reserved for public uses, the court of chancery would appoint a new trustee to take charge of the property and execute the trust for the benefit of the inhabitants of the territory constituting the public.

After stating that the power of the legislature to alter or abolish municipal corporations is not defeated or affected by the circumstance that the corporation is, by its charter, made the *trustee* of a charity, or of other private rights and interests, Judge Dillon adds:

* Batesville Institute v. Kauffman 18 Wallace 151, 154

"Where the legal existence of the municipal trustee is destroyed by the legislative act, the court of chancery will assume the execution of the trust, and, if necessary, will appoint *new trustees* to take charge of the property and carry into effect the trust." 1 Municipal Corp. sec. 37; and see, also, sec. 729, and cases cited, and sec. 47, p. 164, etc.

In the case of *Von Hoffman* v. *Quincy*, 4 Wallace, 535, 555, the Court said:

"Where a State has authorized a municipal corporation to contract, and to exercise the power of local taxation, to the extent necessary to meet its engagements, the power thus given can not be withdrawn until the contract is satisfied. The State and corporation, in such cases, are equally bound. *The power given becomes a trust* which the donor can not annul, and which the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of the contract in this way than in any other." p. 555.

The cases of *Soutter* v. *Madison*, 15 Wisconsin, 30, 36, 37, and *Hasbrouck* v. *Milwaukee*, 25 Wisconsin 122, 132, 141, are to the same effect as that of *Von Hoffman* v. *Quincy*.

Morgan v. *Beloit*, 7 Wallace, 613 was a bill in equity by creditors who had judgments to enforce payment by the two bodies respectively, in the proportions in which the assessment rolls showed the property in the one bore to the property in the other, of debts contracted by a town, by the issue of bonds, which town had been afterward divided by an act of the legislature, and part of it erected into a city, with the provision, in the act of the legislature, that the bonds which had been issued by the town should be paid by the city and town, in the same proportions as if the said town and city had not been dissolved.

The bill was sustained. In doing so, the Court said:

"The authority to tax for the payment of municipal liabilities, in cases like this, *is in the nature of a trust.* The jurisdiction of a court of equity to interfere in all cases involving such an ingredient *is too clear to require any citation of authorities.* It rests upon an elementary principle of equity jurisprudence. 'The power is reserved to a court of equity to act upon a principle often above mentioned, namely, that *wherever there is a right it ought to be made effectual.*' Where there is a right which the common law, from any imperfection, can not enforce, it is the province and duty of a court of equity to supply the defect and furnish the remedy." 7 Wallace, 616, 617.

In *Beckwith* v. *Racine*, 7 Bissell, 142, before Judges Drummond and Dyer, it was decided:

(1.) That counties and towns are, as to their corporate existence, completely within the control of the legislature. They may be changed, altered, enlarged, diminished, or extinguished by the mere act of the legislature.

(2.) When a town is thus obliterated, an action at law can not be maintained against it, for it can not be severed served by process through its officers; for although the officers of a municipal corporation hold until their successors are elected and qualified, still where no successors could be elected, they cease to hold.

(3.) A contract entered into previously is not destroyed and annulled by the obliteration of the town; for the power of taxation still remains. It is only transferred to other corporations.

(4.) When a contract can not be enforced at law, if there is any fund to which the creditor has a right to resort for the enforcement or payment of that contract, it will be followed by a court of equity.

(5.) Where a municipal corporation is legislated out of existence, and its territory assigned to other municipal cor-

porations, *the latter* must pay the existing debts of the former, in the ratio of the amount of territory each obtained.

In delivering the opinion, Judge Drummond first answers the position that there is a remedy at law. p. 144, 145. He also, at p. 147, 148, makes a further answer. He then shows that the contract involved was not destroyed by the destruction of the corporation; and that the provision, at the time the bonds were issued, that they should be paid in a particular way, by the imposition of a tax upon the property within the corporate limits, was the creation of a fund, or rather was the provision of the means to create a fund, by the exercise of the taxing power of the town, to which the creditor had the right to look as his means of payment, and which survived the corporation. p. 145, 146, and also p. 148. He then says: "It is a well recognized principle in equity, as a contract can not be impaired, that where there is any fund to which the creditor has a right to resort for the enforcement or payment of the contract, it will be followed by a court of equity. It would be a reproach to the jurisprudence of this country, where the principle in the fundamental law of this Union is that no State can pass a law impairing the obligation of a contract, if it were allowed to be impaired or destroyed simply by the change of boundaries of a town, or by striking out the name of one town and putting in the name of another." The judge then said, the case before him was not in the predicament of the case decided by this Court, which had been referred to (I suppose he meant *Rees* v. *Watertown*, 19 Wallace, 107, or *Heine* v. *The Levee Commissioners*, 19 Wallace, 655), where it was said there are many contracts which can not be enforced, many debts which never can be paid, and, therefore, there may be a right without a remedy. If there were nothing to which the creditor had the right to

resort to enforce his contract, it might be so, like the case of the individual who is stripped completely of all means to pay a debt. p. 146.

The judge then conceded that there were some difficulties in carrying out the details of the decree, but said it was to be hoped they would be met and overcome.

In this case, it is to be noted, there was no judgment at law, and that very point was considered. p. 147.

The judge said the principles declared in *Curran* v. *The State of Arkansas*, substantially disposed of the most material questions in the case before him. p. 147.

It is remarkable that the first reported case of the kind, and one very much relied on by this Court as authority for the decision of the case of *Upton* v. *Sanger*, 91 U. S. 56, should be in almost every particular a case like the one now before the Court. I allude to the case of *Doctor Salmon* v. *The Hamborough Company*, 1 Cases in Chancery, *204. The company there was incorporated by letters patent, and had power to make by-laws, and to assess rates upon cloths, and by poll upon every member, to defray the necessary charge of the company; and the company had imposed rates accordingly, as namely, 4*s.* 6*d.* upon every white cloth exported, and divers others, and thereby raised 8,000*l.* *per annum* toward the support of the common charge of the company, and had thereby got credit and borrowed great sums of money by their common seal; and, particularly, the plaintiff lent 2,000*l.* upon that security many years before. *The company had no common stock*, and so its creditors had no remedy at law for their debts.

The plaintiff, who does not appear to have been a judgment creditor, filed his bill upon the above state of facts, and charged that the company's usage had been to make taxes and leviations upon the members and their goods to bear the charge of the company to pay their debts,

but they then did refuse to execute that power, and the members did refuse to meet and levy taxes, and pretended a want of power by their charter to levy such taxes; whereas they had formerly exercised power and thereby had gained credit, and the plaintiff thereupon had lent them the 2,000*l.*, which was for the use and support of the company's charge, and so ought to be made good by them.

The bill was against the corporation and divers particular members of it by name in their natural capacities. The corporation did not appear, but divers of the members appeared and demurred, because they were not, in their natural capacities, liable to the plaintiff's demand. On argument, the demurrer was sustained and the bill dismissed. An appeal was then taken to the House of Lords, and the matter argued, and it was ordered that the dismission for so much as concerned the company be reversed, and that the bill be retained, and that the court of chancery issue the usual process, and upon the return of the process, if the company should not appear, the bill should be taken *pro confesso*, and a decree should thereupon pass. In case the company did not pay the sum decreed within ninety days after service of the decree, then the court of chancery should require the officers of the company having the power to do so, within such time as the Court thought fit, to make leviations upon every member of the company who was to be contributory to the public charge, as should be sufficient to satisfy the said sum to be decreed to the plaintiff in that cause, and to collect and levy the same, and to pay it over to the plaintiff as the Court should direct. The Court might employ the process of contempt to enforce the decree it was to pronounce. And, if by the time limited, the money to be assessed should not be paid, then and from thenceforth every person of the said company, upon such a leviation, should be made to be liable in

his capacity to pay his *quota* or proportion assessed. And the Court was to issue such process against any member refusing or delaying to pay his *quota* or proportion, as was usual against persons charged by the decree of the Court for any duty in their several capacities. The Court should also make new leviations, if the sums returned at first should not be sufficient to satisfy the sum decreed.

The company failed to appear in the court of chancery after the service of the process, according to the order of the House of Lords. The cause was then set down for hearing, and none appearing for the defendants, the Court decreed the bill to be taken *pro confesso* and the defendants to pay the plaintiff's debt, according to the lords' order in parliament.

There could not be any practical difficulty in ascertaining and fixing the proportionate amount of the debt of the city of Memphis each tax-payer is to pay. It would be entirely practicable for the Court to have the value of the taxable property of each tax-payer ascertained specially for itself as a basis for its action in determining what each should pay. But there is no necessity for that course. By sec. 63, ch. 92, of the Acts of Tennessee of 1875, p. 159, which was in force until repealed by the act repealing the city charters, the assessment for State and county purposes was declared to be the assessment for city purposes. And sec. 6 of ch. 63, act of 9th March, 1877 (Acts of 1877, p. 96), a general law, declared the assessment made for State and county purposes, the assessment *for every purpose* of municipal and other taxation in any county or part thereof. Now, what is the reason the Circuit Court of the United States may not adopt the assessment of property made by the State and county within the territory of the city of Memphis, and apportion the debt among the tax-payers ac-

cording to it? The truth is, that before the repeal of the city's charter, the only duty its government performed toward the levy of municipal taxes was to certify the rate of taxation to be levied to the clerk of the County Court by the 15th of July of each year, who makes the collection book from the State and county assessment, and shows the amount of tax due from each tax-payer to the State, county, schools, railroads, and municipalities, in separate columns, which exhibit the amount due from each tax-payer for each particular purpose. Secs. 7 and 8 of the act of 9th March, 1877 (Acts of 1877, ch. 63, p. 96, 97).

In *Rees* v. *Watertown*, 19 Wallace, 124, the Court said:

"The difficulty and embarrassment arising from an apportionment or contribution among those bound to make the payment, we do not regard as a serious objection. Contribution and apportionment are recognized heads of equity jurisdiction, and if it be assumed that process could issue directly against the citizens to collect the debt of the city, a court of equity could make the apportionment more conveniently than could a court of law."

XII.

As to the parties before the Court— Who are and who ought to be defendants.

In *Rees* v. *Watertown*, 19 Wallace, 121–124, some stress seems to have been laid upon the fact that the citizens whose private property it was sought to subject to the payment of the judgment against the city had not had a day in Court, though I do not understand that to have been a ground of the decision.

The present suits—creditors' bills—to enforce judgments at law against the city of Memphis, are but ancillary

to, or rather a continuation of, the suits in which the judgments were recovered.

Jones v. *Andrews*, 10 Wallace, 327.

Brooks v. *City of Memphis*, 3 Central Law Journal, 356, and cases there referred to.

In the suits in which those judgments were so recovered, the city of Memphis was the proper, and the only proper or necessary party, and it represented all the inhabitants of its territory, and everybody liable to taxation therein, who were, while the city existed, certainly bound by the judgments and the proceedings in the suits, though they were not by name parties to them.

Supervisors v. *United States*, 4 Wallace, 435, 444.

Mayor v. *Lord*, 9 Wallace, 409, 413, 414.

High on Extraordinary Legal Remedies, sec. 380.

By the code of Tennessee, sec. 49, and the law independent of the statute, the repeal of the charter of the city of Memphis could not affect the right of the plaintiffs in the judgments to proceed to enforce the same in the same manner and with the like effect as they might have done, if the charter had not been repealed. In other language, the repeal had no application to the judgments or the proceedings to obtain satisfaction of them. *Memphis* v. *United States*, 97 U. S. 293.

The same question—that is, how far a citizen is bound, though not personally notified of the proceedings, nor present when they are had—was considered with reference to assessments for taxation, and their increase by the board of equalization, in *State Railroad Tax Cases*, 92 U. S. 575, 609, 610, where it was decided they were not entitled to any notice.

The question in both aspects—that is, as to the effect of the judgment against the city for the debt, and of an order of the Court as to the property to be taxed to pay it,

on the citizens and tax-payers—was considered in *Merchants of Memphis* v. *City of Memphis*, and *Schaffer, Tax Collector*, MSS. Opinion of the Supreme Court of Tennessee, used before this Court, and referred to in *Memphis* v. *Brown*, 97 U. S. 303.

It was held the city of Memphis represented the citizens and tax-payers, and they were concluded by the judgment and order against it, though none of them had been given personal notice or were individually before the Court.

In *McLoud* v. *Selby*, 10 Connecticut, 390, 396–399, a well considered case, it was held that a judgment against a school district concludes all the inhabitants of such district.

The same proposition was maintained in the later case of *Beardsley* v. *Smith*, 16 Connecticut, 368, as to a judgment against a city. It was held to conclude the inhabitants individually.

In each of the cases referred to, the question arose in an effort of the judgment creditors to subject the private property of an inhabitant to the satisfaction of a judgment against the corporation, by the levy of an execution at law upon it.

In *Railroad Company* v. *Howard*, 7 Wallace, 415, which was a bill by the general creditors of a railroad company, to recover a fund set apart by an agreement between the holders of the mortgage bonds, the secured creditors, and the stockholders, for the stockholders, to the exclusion of the creditors, the stockholders, though directly and exclusively interested, were not made parties.

In answer to the objection that the stockholders had not been made parties, the Court said it was not necessary, "because their interest is fully represented by the parties before the court," to wit, the railroad company and the

committee of the trustees chosen by the stockholders and bond holders, through whom the arrangement was perfected and the contract of sale carried into effect.

In *Upton* v. *Sanger*, 91 U. S. 56, it was held that the stockholders of a bankrupt insurance company were before the bankrupt court through the insurance company, and were entitled to no notice of the order requiring payment of the balance due on their stock, and that the order concluded them, though made when they personally were absent, as to the right of the assignee in bankruptcy to recover.

Turnbull v. *Payson*, 95 U. S. 418, and *Pullman* v. *Upton*, 96 U. S. 328, I understand to have decided substantially the same thing.

But, whatever there may be in this question, the objection can not go to defeat the bills. If the tax debtors are entitled to be before the Court personally, the Court below can, without the least difficulty, direct them to be notified before any judgment, personal as to them, is pronounced.

The decree, as far as it has gone, can not injure them individually, as distinguished from the corporation, or the aggregate mass of the corporators, as represented by the city. It decides: 1. That the creditors are to be paid their debts; 2. That the taxes already assessed, but not collected, are to be appropriated to their payment; and, 3. That all the taxable property of the city is subject to future assessments, *pro rata*, for the payment of what may remain due of the city's debts. It does not decide that any body owes taxes, except Hardin, Hill, and Williams, who have been notified, and are before the Court; nor that the property of any particular individual is subject to future assessments. Those questions will arise in the further progress of the case, and then, if entitled to it, the tax debtors, or those

owning taxable property, can have, and no doubt will have, as Hardin, Hill, and Williams had, due notice before any steps are taken against them, for the purpose of compelling them to pay the city's debts, or any part of them. See Rules in Equity for Federal Courts, No. 48.

And see the case of *Doctor Salmon* v. *The Hamborough Company*, 1 Cases in Chancery, *204, where, notwithstanding it was held the individual members of the company were liable to contribution to pay the company's debts, and assessments upon them, to pay the proportions they were liable for, were directed, the demurrer to the part of the bill which made the members of the company *personally* defendants was sustained both in the court of chancery and in Parliament. The bill was retained *only* as to the company.

And the authorities, it seems to me, justify the position that the legislature could not, if it attempted, so abolish a municipal corporation as to make it necessary for its existing creditors, and particularly those who had suits pending, to sue individually its inhabitants for their proportionate contributions toward the payment of its debts.

Milner v. *Pensacola*, 2 Woods C. C. 632.

Broughton v. *Pensacola*, 93 U. S. 266.

Welch v. *St. Genevieve*, 1 Dillon C. C. 130.

1 Dillon's Municipal Corporations, sec. 114, etc.

XIII.

A question is made about the authority of the Court to appoint a receiver to collect the taxes, and the powers that can lawfully be given to such receiver.

The appointment of the receiver, and the powers given him are in the record, p. 63–67.

The act of the legislature of Tennessee, of the 23d March, 1877 (Acts of 1877, ch. 81, p. 88–91), authorized the chancery court to appoint a receiver for Memphis, upon the conditions appearing in the act.

This act was repealed on the 31st January, 1879, by section 3 of chapter 10 of the Acts of 1879, p. 14, or at least, was attempted to be. This was the same act which repealed the charters of Memphis.

However, on the 28th January, 1879, three days before the repeal, Robert Garrett & Sons, the plaintiffs in one of the bills, filed an original bill in this Court, alleging the state of facts contemplated by the act of 23d March, 1877, and prayed the appointment of a receiver. Record, p. 1–4.

They afterward filed an amended and supplemental bill in the nature of a general creditor's bill. Record, p. 6–22.

Of course, the repeal of the act of 23d March, 1877, *after* they commenced their suit, could not affect their rights.

Code of Tennessee, sec. 49.

Memphis v. *United States*, 97 U. S. 293.

After the filing of all these bills, and the appointment of the receiver under them, the legislature of Tennessee passed an act providing for a receiver of the taxes assessed and uncollected, due the city of Memphis, and gave him certain duties to perform, and conferred certain powers. See act of 14th March, 1879 (Acts of 1879, ch. 92, p. 127).

This act, it will be noticed, has reference only *to taxes already assessed, remaining unpaid*, and does not profess to provide for the debts of the city, beyond the proceeds of those taxes, nor has the legislature anywhere made any other provision for the payment of those debts.

It is preposterous to suppose that the federal court, after it had, in suits properly brought, appointed a receiver,

and he, under its orders, had gone forward and taken into possession the necessary books, records, and papers, and had commenced the collection of the taxes, would, because of the act of 14th March, 1879, and the appointment by the governor thereunder of Meriwether as receiver and back-tax collector, relinquish its possession, discharge its receiver, and turn over to Meriwether the collection of the taxes, which, by law, are applicable only to the payment of the judgments and debts in the suits before it. No court, under like circumstances, would entertain such a proposition for a moment; and I have not referred to the act for the purpose of arguing against Meriwether's right to collect the taxes. My object is quite different. It is to claim for this Court, and its receiver in these suits, whatever powers and authority the act has conferred on the chancery court, and on the receiver and back-tax collector, and also whatever powers and authority the act of 23d March, 1877, conferred on the chancery court and on the receiver it provided for, for the purpose of enabling this Court and its receiver, by the exercise of such powers and authority, the better to collect the taxes due, and to levy and collect such others as may be necessary, in order the more speedily to pay the judgments and debts of the plaintiffs in these suits. I insist this Court may, in these suits, do every appropriate act which the chancery court of the State might have done under either of those acts, in suits before it, and that the receiver of the federal court may do any thing proper to be done in the discharge of his duties as receiver, which the receiver provided for might have done under the act of 23d March, 1877, before its repeal, or which the receiver and back-tax collector provided for in the act of the 14th March, 1879, might do under that act.

The acts confer rights which the federal courts will

give effect to. This principle has already been alluded to, and will be further noticed a little further on.

In *Davis* v. *Gray*, 16 Wallace, 203, 216, 217, the authority of the receiver of a railroad company created by the State of Texas as conferred by the Circuit Court of the United States, in a suit in equity before it, and which the Supreme Court approves, was: "To take possession of the moneys and assets, real and personal, road-bed, road, and all property whatsoever of the corporation, wheresoever the same might be found, with power, under the special order of the Court from time to time to be made, to manage, control, and exercise all the franchises whatsoever of the corporation, and, if need be, under the direction of the Court, to sell, transfer, and convey the road, road-bed, and other property of the corporation as an entire thing, and to defend and continue all suits brought by or against the corporation, whether before or after the appointment of the receiver, and whether in the name of the company or otherwise; defend all suits brought against him as such receiver, or affecting his receivership, and to bring such suits in the name of the said company, or in the name of the receiver, as he might be advised by counsel to be necessary and proper in the discharge of the duties of his office, and for acquiring, securing, and protecting the assets, franchises, and rights of the company and of the receiver, and for securing and protecting the land grant and land reservation of the company." 16 Wallace, 219.

The receiver brought the suit, not in the name of the railroad company, but in his own name, which the Court decided was proper. 16 Wallace, 219.

In discussing the matter, the Court said the plaintiff in the suit in which the receiver was appointed might make a person claiming adversely to the receiver a party by amend-

ing his bill, or the receiver might proceed against him by suit in the ordinary way. 16 Wallace, 218.

The suit of Gray, the receiver, against Davis, the governor of Texas, and others, was to enjoin third persons, not parties to the main suit, whose acts would have rendered "the rights and title of the corporation to 'the land grant and reservation of the company' of greatly diminished value, if not wholly worthless." 16 Wallace, 219.

In its opinion the Court said: "In the progress and growth of equity jurisdiction it has become usual to clothe receivers with much larger powers than were formerly conferred."

The Court then mentioned State statutes providing for settling the affairs of insolvent corporations, and said: "As regards the statutes, we see no reason why a court of equity, in the exercise of its undoubted authority, may not accomplish all the best results intended to be secured by such legislation without its aid. 16 Wallace, 219, 220.

It has been shown the city of Memphis could have maintained an action of debt, or could have sustained a bill in equity to recover the taxes due it. It follows, therefore, the receiver appointed by the Circuit Court in these suits may do the same thing.

In *Curran* v. *The State of Arkansas*, 15 Howard, 304, the suit was by Curran, the creditor of the insolvent bank, directly against the State, which, by appropriating the assets of the bank, had become the debtor of the bank; and the plaintiff had a decree.

And the same course was pursued in *Doctor Salmon* v. *The Hamborouyh Co.*, 1 Cases in Chancery, *204.

The Court said in *Davis* v. *Gray*, as we have seen, that the plaintiff in the suit in which the receiver was appointed might make a person claiming adversely to the receiver, and I suppose a person owing a debt or taxes to the receiver

would be included, a party to the suit by amending his bill, and, of course, have a decree against him.

That course was pursued in this case as to the defendants, Hardin, Hill, and Williams, who are tax debtors, and were made parties by amendment.

The decrees against these tax debtors, Hardin, Hill, and Williams, for the amounts of taxes they severally owe are in the favor of T. J. Latham, the Receiver.

The provisions of the code of Tennessee having reference to the winding up of insolvent and dissolved corporations, may be again referred to in this connection. They have already been copied.

By section 3426: "The Court shall appoint a receiver with full power to take possession of all the debts and property, and sell and dispose of, collect and distribute the same among the creditors and other persons interested under the order of the Court."

And section 3431 provides: "Any creditor for himself and other creditors, whether he has recovered judgment or not . . . may file a bill under the provisons of this chapter, and attach the corporate property, and have such property applied to the payment of the debts of the corporation." . . .

And secs. 4294 and 4295 provide: "The creditors of a corporation may also, without first having obtained a judgment at law, file a bill in the chancery court to attach the property of the corporation and subject the same by sale, or otherwise, to the satisfaction of their debts, when the corporate franchises are not used, or have been granted to others, in whole or in part," and "in such cases the Court may appoint a receiver, take an account of the affairs of the corporation, and apply the property and effects to the payment of the debts *pro rata*."

I take it that all these provisions were but in affirm-

ance of the pre-existing law. And admitting they could not confer jurisdiction on a federal court, still in a case of which a federal court already has jurisdiction, it is perfectly admissible for it to avail itself of the means or facilities provided by the State statutes for the purpose of securing to the parties interested their rights. *Supervisors* v. *Rogers*, 7 Wallace, 175.

Case of Broderick's Will
21 Wallace 503, 517 - 518

XIV.

Liens for Taxes, etc.

I have said nothing particularly about enforcing liens for taxes due the city. I have referred to the laws showing such liens existed in favor of the city. I assume the Court will enforce for the benefit of the creditors any remedies to collect taxes the city possessed. And that it is peculiarly the province of a court of equity to enforce liens none will deny.

XV.

And in this case, I contend the Court and the receiver are not confined merely to remedies in Court by the ordinary course of the law to collect the taxes, either those already levied, or those hereafter to be levied.

It has been seen that by the legislation of the State of Tennessee and the city of Memphis, the city had all the remedies for the collection of taxes that the State possessed.

Summary methods of collecting taxes, as for instance, by distress warrant, which is nothing more than the seizure by the officer having the tax-book in his hands, and charged with the collection of the tax, of a sufficiency of the personal property of the tax-debtor to pay the tax, and its sale, as under a process of execution, are constitutional, and have been practiced in Tennessee from its earliest history. *McCarroll's Lessee* v. *Weeks*, 5 Haywood (Cooper's Ed'n), 246.

And see—

Brittain v. *Cowles*, 2 Hawks' Law and Eq. 204.

Commonwelth v. *Byrne*, 20 Grattan (Va.), 165.

Murray's Lessee v. *Hoboken Land Company*, 18 Howard, 272.

McMillan v. *Anderson*, 95 U. S. 37.

In *Davis* v. *Gray*, 16 Wallace, 203, the Court said:

"A party by going into a national court does not lose any right or appropriate remedy of which he might have availed himself in the State courts of the same locality. The wise policy of the constitution gives him a choice of tribunals."

The case of *McNeil Exparte*, 13 Wallace, 236, and *Railway Company* v. *Whitton*, 13 Wallace, 270, asserting in substance the same principle have already been referred to.

I, therefore, insist not only that the Circuit Court had the power to authorize its receiver to bring suits in the Courts to collect the taxes due the city of Memphis, which he has been directed to collect, but it should have gone further and should have directed him in all proper cases to use the process of distress, as practiced under the laws of the State, to effect summary collections. *

The creditors of the city not only contracted for the exercise of the power of taxation as the means of collecting their debts, but they contracted for its exercise in the usual and accustomed summary way—that is, by distress warrant. It is as important to them now as it was when the debts were contracted, or when the city itself was exercising the power of taxation in their behalf, that the taxes should be collected in this summary way. As the creditors have been subrogated to all the remedies of the city to collect taxes, and those remedies are to be afforded them under the authority and sanction of the Court, through the instrumentality of a receiver, in order that the

* Case of Prudencio Hill 21 Wallace 503, 517 — 518

remedies may be as efficacious as they were when the creditors contracted for them, the power of distraint must be conferred.

It is useless, of course, to point out to the Court the immense difference between ordinary suits at law or in equity as a means of collecting taxes, and that by distress.

And this difference will be of great consequence when future levies have been made, and the taxes are to be collected.

XVI.

Collection of taxes to pay judgments only the exercise of powers under final process of execution.

Another view may be taken:

The parties seeking relief in these suits have judgments in the Circuit Court, and the whole purpose of the bills is to obtain satisfaction of those judgments. These suits, therefore, like the writ of *mandamus* when employed as a means of enforcing payment of a judgment, are but auxiliary to the suits in which the judgments were obtained, or are but the process for executing those judgments.

Jones v. *Andrews*, 10 Wallace, 327, 333.

Ex parte Flippin, 94 U. S. 350.

Memphis v. *Brown*, 97 U. S. 300.

Wayman v. *Southard*, 10 Wheaton, 23.

By a statute, as well as by a rule of Court, the practice in the State of Tennessee with reference to final process to execute judgments at law or decrees in equity is the practice of the Courts of the United States sitting in Tennessee in the like cases.

Now the regulations provided in the code, secs. 3426, 3431, 4294, 4295, for the appointment of receivers, and the

collection and distribution of the assets of dissolved corporations, when applied to the case of judgment creditors seeking such relief, are but regulations of final process or process of execution, and necessarily are adopted by the statute and rule of Court for the government of the Courts of the United States.

By the Code of Tennessee, also, section 3037:

"An execution against a corporation may be levied of its choses in action, as well as of the goods and chattels, lands and tenements of such corporation; and in case of a levy on choses in action, the Court may appoint a receiver to collect the same."

If the position taken above is right, then also, why, when the collection of taxes to satisfy a judgment of a Court of the United States becomes necessary, is not the distress warrant, the usual mode of collecting taxes in Tennessee, adopted by the act of Congress and the rule of court, along with the other final process of the State courts? This Court has frequently decided that the *mandamus* requiring the collection of taxes to satisfy a judgment, including every step taken under it to carry out its commands, is the process of execution, or a part of the proceedings under the process of execution of the federal court.

Riggs v. *Johnson County*, 6 Wallace, 166.
United States v. *Council of Keokuk*, 6 Wallace, 514, 518.
Mayor v. *Lord*, 9 Wallace, 409, 414.
Ex parte Flippin, 94 U. S. 350.
Memphis v. *Brown*, 97 U. S. 300.
And see *Ex parte Holman*, 28 Iowa, 97.

The distress warrant, it is very clear, comes within the principle. When the city tax collector proceeded to collect taxes levied in pursuance of a *mandamus* from a federal court, he certainly would have used it, if necessary, as

his appropriate process. When the receiver of the federal court goes out to execute its judgments in the same way the city tax collector would have done, why may he not, in the same manner, employ the distress warrant?

XVII.

Injunction against Meriwether.

The injunction against Meriwether, the receiver and back tax-collector appointed by the governor under the statute of the State, passed since the jurisdiction of the Circuit Court attached in these suits, and since the receiver was appointed by it, and since he took possession of the books, papers, and assets ordered into his custody, was authorized and necessary.

Osborne v. *The Bank of the United States*, 9 Wheaton, 738.

Davis v. *Gray*, 16 Wallace, 203.

Riggs v. *Johnson County*, 6 Wallace, 166.

Terrell v. *Allison*, 21 Wallace, 289, 291.

Board of Liquidation v. *McComb*, 92 U. S. 531, 541.

Freeman v. *Howe*, 24 Howard, 450, 460, 461.

C. S. M. Co. v. *V. & G. H. W. Co.*, 1 Sawyer's C. C. R. 470, 482, 483, and 685, 689–693.

Fox v. *Hempfield*, 2 Abbott's U. S. R. 151.

Brooks v. *City of Memphis*, 3 Central Law Jour. 356.

Ex parte Holman, 28 Iowa, 88.

2 Story's Eq. J., secs. 891, 891*a*, 903.

Daniels' Ch. Pl. & Pr. 1270, 1837.

Kerr on Injunctions, 144, 145, 147.

The injunction extends no further than to prevent Meriwether from interfering with the assets and property and books and papers and writings in the possession of or to be collected by Latham, the receiver of the federal court, under its orders. (Record, p. 110.)

XVIII.

Tax-debtors need not pay money.

One of the points sought to be presented, though I do not see how it arises in this record, is, that the tax-debtors are not liable to pay the taxes they owe in money, but may pay them in any city indebtedness.

In the first place, I claim this question must be presented by each debtor for himself, and can be raised only when he comes into Court and tenders the particular indebtedness he wishes received for his taxes. Then the Court will pass upon *his* right.

But passing this point, the tax-debtors rest their claim on section 66, chapter 92, of Acts of Tennessee, of 1875, p. 160, and on no other positive statute, so far as I know. That section required cities "to receive in payment of all taxes that might be due, or that had accrued, up to January 1st, 1875, all their past-due indebtedness, except bonds of the city." It then required all taxes falling due after 1st January, 1875, to be paid in current funds, or in past-due indebtedness of the city for the current year to which the tax would be applicable.

(1.) The above section, and the whole chapter, were repealed by section 4, of chapter 10, of the Acts of 1879, p. 14.

The repeal was certainly valid, as it merely withdrew a privilege; or, at most, only modified the remedy of those having debts against the city, to collect them.

City of Augusta v. *North*, 57 Maine, 393.

Tribune Association v. *The Mayor*, 48 Barbour, 240.

Cooley's Constitutional Limitations, p. 287, note; and p. 361, note.

Christ Church v. *Philadelphia*, 24 Howard, 300.

Beers v. *The State of Arkansas*, 20 Howard, 529.

(2.) Taxes generally are payable only in lawful money.

Johnson v. *United States*, 5 Mason, 425.

United States v. *Morgan*, 11 Howard, 154, 159.

Miltenberger v. *Cook*, 18 Wallace, 421.

Cooley on Taxation, p. 12.

And I know of no law authorizing a Court of the United States to render a judgment *for money* to be discharged in any thing but *the lawful money* of the United States.

The amendment to the city charter, of 1870 (Acts of 1869–1870 [private], ch. 117, sec. 3, p. 632), as I have already shown, required all taxes to the city to be paid in money.

(3.) So far as the taxes have been levied to pay particular debts, as for instance, the interest on the bonds of the city, and the like, and so far as they have been levied under compulsion, by writ of *mandamus*, to pay specific judgments, as, for instance, the taxes to pay the decree of T. E. Brown, they must necessarily be paid in money, as it would not be possible to discharge those debts, or those judgments, in any other way. This Court has decided the exact point in Brown's case. *Memphis* v. *United States*, 97 U. S. 293.

(4) The code of Tennessee, perhaps, requires a distribution *pro rata* among the creditors of the assets of a dissolved corporation—meaning, of course, general assets, and those creditors who have no specific liens *before* the dissolution. The Supreme Court has decided that *after* the legal insolvency of a banking corporation no creditor can fix a lien upon its assets by suit so as to give him a preference over other creditors, but all must share the assets equally in proportion to their respective demands. *Marr* v. *Bank of West Tennessee*, 4 Coldwell, 471.

So far as concerns the taxes due the city of Memphis which have *not* been levied to pay a certain class of debts,

or have not been levied for the specific purpose of paying particular creditors, no doubt this rule ought to be applied to them.

If it *is*, then it is impossible to allow the payment of taxes in city indebtedness. For there certainly can be no equal distribution among all the creditors, if the tax debtors, who happen to hold indebtedness are allowed to pay in their indebtedness to the full amount of the taxes they owe. In this way only the *tax debtors* could collect their debts. Others, not taxable inhabitants, or who had paid their taxes, to whom the city might be indebted, could collect nothing on their debts, at least not till the debts of the tax debtors had all been paid in full. It is not apparent that this latter class deserves any special favors.

In *Sawyer* v. *Hoag*, 17 Wallace, 610, it was decided:

"That a stockholder indebted to an insolvent corporation for unpaid shares, can not set off against this trust fund for creditors a debt due him by the corporation. The fund arising from such unpaid shares must be equally divided among all the creditors." See p. 622, 623.

(5.) The well-established general rule of law, independent of statute, is that there can be no set-off to a demand for taxes.

Cooley on Taxation, 13, 14, and cases cited.

Waterman on Set-Off, sec. 37, p. 41, and sec. 153, p. 189.

To require the payment of money from *all* will be to treat all exactly alike. No one can *lose*, or suffer more than the inconvenience, if there is any, of having to pay out a sum of money, and of afterward having to get a like sum back. But, if he gets it back, as he certainly will if all the tax debtors pay money, he has not been injured.

What has been said sufficiently answers the position that this Court is to proceed, if it proceeds at all, to collect

and distribute the taxes due the city of Memphis under the provisions of chapter 92 of the acts of 1879 (p. 127–132). So far as that act confers power or authority of which this Court stands in need in order to give the plaintiffs, the creditors, efficient remedies, it will avail itself of the grant, and exercise the power, or act under the authority. But so far as that act undertakes to take away, or injuriously alter, curtail, or modify the rights or remedies of the creditors as they were at the bringing of these suits, and at the passage of the act, the act is simply void, and the Court will not regard it.

Constitution of Tennessee, article 1, secs. 20, 8.

Code of Tennessee, sec. 49.

Fisher's Negroes v. *Dabbs*, 6 Yerger, 119.

Tucker v. *Burns*, 2 Swan, 35.

Memphis v. *United States*, 97 U. S. 293.

NOVEMBER 7, 1879.

WM. M. RANDOLPH,

Of Counsel for Appellees, Creditors of the City of Memphis.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1879

MINOR MERIWETHER, Receiver, Etc., of the City of Memphis, et als Appellants.

vs.

ROBERT GARRETT & SONS, et al Appellees.

No. 916

IN EQUITY.

Brief of Myers & Sneed, of Counsel for Appellees.

ROGERS & CO., PRINTERS, MEMPHIS.

In the Supreme Court of the United States,

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No. 916

IN EQUITY.

Brief of Myers & Sneed, of Counsel for Appellees.

The Appellees are creditors of the city of Memphis, a municipal corporation chartered under the several Acts of the Legislature of Tennessee hereinafter referred to, nearly all of them named in the original, amended and supplemental bills, are judgment creditors, whose judgments are based on the past due bonds and coupons or interest warrants of the city of Memphis, as hereinafter shown.

January 28, 1879. Robert Garrett & Sons, and others, filed their original bill in the Circuit Court of the United States, District of West Tennessee, against the city of Memphis for the appointment of a Receiver for said city, under Act of March 23, 1877.

Acts 1877, Ch. 81, pp. 89-91.

And also under the General Law—

Alleging, 1st, That they are the owners and holders of past due and unpaid bonds and coupons of the defendant corporation, to the amount of more than $100,000, and that on

much of the indebtedness they have judgments and mandamus to compel the collection of the same; that for the years 1875, 1876, 1877 and 1878, large levies of taxes had been made, under mandate of the Federal and other courts, for the payment of Complainants' said judgments; but that, owing to connivance and inefficiency of the city authorities, no determined effort had been made to collect the said taxes; that said taxes were levied for the sole purpose of paying Complainants' said judgments, and could be applied, when collected, to no other purpose, and constituted a Trust fund for that purpose.

That a large amount of judgments and tax mandamuses are now outstanding and uncollected, amounting in the aggregate to over $850,000, and that the said corporation has a population of over 35,000 inhabitants, and was one of the municipal corporations covered by said Act; that the defendant is merely a Trustee for the collection of the mandamus taxes, and has failed and refused to execute the trust.

Record, pp. 1–5.

Summons issued on said bill, and was duly served, January 29, 1879.

Record, p. 5.

January 31, 1879, by an Act of the Legislature the charter of the city of Memphis was abolished, and the inhabitants and territory thereof resolved back into the body of the State, and all offices of said corporation declared to be abolished; all taxing power vested in the Legislature, and the public buildings, and all property (therein set out), and all property used by said municipal corporation for municipal purposes, was thereby transferred to the custody and control of the State, etc.; and that no officer of such dissolved corporation should attempt to exercise the functions of his office after the repeal of said act.

Acts 1879, Ch. 10, pp. 13–15.

NOTE.—*It will be noticed that in this Act no provision is made for, or disposition made of, the taxes or chosees in action due said city, or any property, except that used for municipal purposes.*

January 31st, 1879, by another and subsequent Act of the Legislature, "*the communities embraced in the territorial limits*"

of the abolished corporation was created into a "Taxing "District."

Acts 1879, Ch. 11, Sec. 1, pp. 15–16.

Section 2. That the taxes imposed for the support of the same, should be imposed by the General Assembly of the State, and not otherwise.

Acts 1879, p. 15.

Sections 3, 4, 5, 6, 7, 8, 9, 10 and 11 define the powers and provide officers for the "District," etc.

Acts 1879, pp. 16–24.

Section 12, p. 25 enacts, among other things, "that the "Commissioners, and other agencies employed by this Act, "are expressly prohibited from levying any tax for any pur- "pose."

"And no writ of mandamus or other process shall lie to "compel them to levy any taxes." "Nor shall the Commis- "sioners, or said Trustee, nor local government created by "this Act, pay or be liable for any debt created by said ex- "tinct corporation; nor shall any of the taxes collected under "this Act ever be used for the payment of any of said "debts."

Section 14, pp 25, 26 provides—

1st. "That all the fire-engines and other property, real and "personal, hitherto used by such (dissolved) corporation for the purposes of government." * * And the taxes hereto- fore assessed as privilege taxes, for the police and firemen, "are hereby transferred to the custody and control of said "commissioners," etc.

2d. "And that all indebtedness for taxes and otherwise, "whether in litigation or otherwise, due to the said munici- "palities, shall vest in and become the property of the State, "to be disposed of for the settlement of the debt of such ex- "tinct municipalities, as shall be hereinafter provided by law."

NOTE —*Nowhere in this Act was any other provision made for disposition of said taxes or claims, or for creditors; and no per- son or officer was provided, who could exercise control over*

or take charge of or protect the tax books, or other property of said dissolved corporation, not given the Taxing District.

February 7th, 1879. Robert Garrett & Sons, and others, filed their amended and supplemental bill to meet the changed condition of affairs, and made it a *general creditor's bill."*

Record, pp. 6–22.

February 10, 1879. Fairman, Rogers *et al* also filed a general creditor's bill, which will be found on Record, p. 60.

1st. Complainants show the different acts of the Legislature incorporating the town and city of Memphis, and the powers conferred to issue bonds, create debts, and the special power to levy taxes, for the sole purpose of paying the interest on the bonds, and a sinking fund to pay the principal thereof; and that such taxes could not be applied to any other purpose.

Record, pp. 9—12.

2d. That under the Act of March 18th, 1877 (Acts 1877, pp. 13—15), many of the creditors of Memphis, including most of the Complainants, had funded their bonds at 50 and 55 cents on the dollar, under the provisions of said Act. Some hold the original bonds and coupons, and some hold the new compromise bonds,—under the Acts of the Legislature conferring power to issue said bonds, and in force at the time of the issuance thereof, full power was given to levy and collect a special tax sufficient to pay the interest thereon, which should be applied to no other purpose whatever.

Also, a sinking fund tax, which was to be applied to the sole purpose of retiring the bonds of the city when they become due.

Acts.

That, sinking fund commissioners had been appointed to receive and pay out the sinking fund for this sole purpose.

Acts.

Ordinances of Memphis, 1873, pp. 189, 192.

That under the Act of March, 1877,—the Compromise Act,—Interest Commissioners had been appointed to receive the Interest tax to pay the interest on the compromise bonds —who had continued to act until the passage of said Act, abolishing the charter.

That Complainants had recovered judgments severally against the city of Memphis, as shown on Record, pp. 12–16.

That on nearly all said judgments, complainants had procured peremptory writs of mandamous from the Circuit Court of the United States; that in obedience thereto, the City of Memphis had levied the tax to pay said judgments, specifying the amount, and the party for whom levied, and called the "sundry mandamus tax." These levies were made for 1875, 1876, 1877 and 1879, and the ordinance levying the same is referred to. That only part of said levies have been collected; and that part of said mandamus levies have been collected, and are now in the hands of J. C. Neely, City Treasurer, in the German National Bank, and other parties made defendants. That said tax is special, and could only be applied to the payment of complainants, several judgments.

That besides the amount collected and on hand of said taxes, there is still uncollected as follows: 1st sundry mandamus for 1875, $56,375 32. 2. Sundry mandamus for 1876, $36,385.52. Sundry mandamus 1877, $90,814,61. Sundry mandamus 1878, about $308,578.16 All these amounts are for the specific payment of complainants judgments on bonds and coupons.

Besides these there has been levied for the sole purpose of paying the Brown judgment under mandamus, which remain uncollected the sum of about $367,859.68. Also tax uncollected to pay sundry indebtedness, $———

Also, under the different acts of the legislature, to-wit:

There remains uncollected of the tax, levied for the special purpose of paying the interest on the bonds of the city, $228,255.96.

Also uncollected taxes under act of March 23, 1873, page 102, for the special purpose of reimbursing those persons who had paid the front foot assessment for the Nicholson pavement, $57,198.55.

Also, special judgment tax $11,722.86, besides judgment tax of 1878.

Also, there is taxes levied, and uncollected for the year 1877, specifically to pay the interest on the new compromise

bonds, issued under act 1877, ch. 10, pp. 13–18; the sum of $61,795,61; besides a like tax for 1878, amount not known.

Besides these and other special taxes levied for special purposes, there remains uncollected of the tax levied for general purposes about $766,273.66, besides general tax for 1878 not counted in.

There are also other special levies referred to in the bills, to-wit:

Sinking fund tax uncollected, levied for the sole purpose of retiring the bonds of the city, and under control of sinking fund commissioners, $55,000, or thereabouts.

Record pp. 16–25.

Record pp. 52–55.

Said bill further charges that the officers of said city have abandoned their trusts, and refuse to act, including the sinking and interest commissioners; that these different funds, are trust funds; and the trustees have abandoned their trusts, &c., &c. See whole of bills, and pray for the appointment of a Receiver under the general powers of the Court of equity, in addition to the special power.

Hopkins Loudin also filed a separate bill.

Record p. 22–29.

Brown did the same.

P.———and others.

February 12, 1879, the Court consolidated all of said causse, and appointed a Receiver to take charge of the property of the old corporation, including its tax books and bills for taxes uncollected, and February 21, 1879 complainants in the consolidated causes filed a further amended bill, and made the interest commissioners of the special interest tax, to pay interest on new compromise bonds parties, and to be found on page 59 of Record, with power to collect the same.

See decree, Record p. 63–67.

After the appointment of the Receiver, T. J. Latham took possession of all the property of the old city, named in

the decree, its tax books, papers, &c., and collected from the different trustees who had abandoned their posts, about $100,000 of the special trust funds, and was going on to discharge his duties, when on the 14th of March, 1879, the legislature passed what is known as the Receivers act; and authorizes the Governor to appoint a Receiver and back tax collector, for the extinct corporation of Memphis, which provides:

1st. Said Receiver is empowered to file a general creditors bill in the Chancery Court, in the name of the State, against all the delinquent taxpayers; giving said Court power to settle and adjust all priorities of creditors, and to have all the powers conferred in Chancery Courts in winding up insolvent estates

Acts 1879, Section 4, p. 128.

2d. That taxes due prior to 1875, may be settled in the valid indebtedness of the extinct municipality, in accordance with the provisions of Section 66, of act of March 20, 1875; and any other indebtedness, *note*. The abolishing act of January 31st, 1879, had previously expressly repealed this act of March 20, 1875, and the Legislature attempted to re-enact it after the court had taken jurisdiction and appointed a receiver.

3d. These evidences of debt are receivable, as follows: Compromised bonds and coupons at par; other indebtedness, except judgments, at 50 per cent—judgments at 55 cents on the dollar.

4th. For taxes due subsequent to 1874, any of the valid indebtedness of said City "*When there is no lien or equity re-*"*quiring the same to be paid in current money*.

Do. Section 5, p. 129-130

5th. Provides that the Receiver shall not collect more than one fifth annually of the back taxes in any kind of indebtedness to run collection through five years from his appointment. "Provides that no vested rights are to be inter-"fered with.

Acts 1879, Section 6, p. 130.

6th. That when collections are made they shall be paid over to the Treasurer of the State, etc.

7th. Extends the time for the redemption of lands sold for taxes to five years.

Under this act, after the Circuit Court had taken jurisdiction of the parties and subject matter; had appointed its Receiver, who was duly qualified and in possession of the property and assets; the appellant Meriwether qualified and assumed authority to take charge of and control the same, April 3, 1879. Complainants in the consolidated causes by leave of the Court filed their supplemental bill, making said State Receiver Meriwether a defendant; also J. B. Hill, Jos. R. Williams and W. F. Hardin, who owed taxes to said City, the bill is found on p. 75-98 of the Record.

It seeks to enjoin Meriwether from interfering with the Receiver of the Court, and to recover from Hill, Williams and Hardin the amount of taxes due from them.

Pro confesso was taken as to parties who did not demur R. p. 63-67

To these bills originally amended and supplemental. The defendants appeared and filed demurrers. Meriwether's demurrer; will be found on p. 100-102, that of Hardin from 102-103; that of the City of Memphis and others p. 104-105.

Upon hearing of demurrers the Court overruled the same and pronounced the final decree to be found on p. p. 109-110 111 of R.

The Judges divided in opinion on certain questions; to be found on p. p. 106-107-108-109, of Record, and the same are certified under the statutes for the decession of this court.

It will be apparent that all this new legislation bears on its face the intent to defeat the creditors of the City of Memphis entirely, the attempted fraud is so apparent that it cannot be disguised, and if the said acts were between individuals, no Court would hesitate long to declare them fraudulent in fact and void on their face.

For the convenience of the Court, we have presented Statement of the Legislation in reference to the City of Memphis, and reference to the Statutes pertaining thereto, of such portions as we have deemed important.

Statement of Legislation in Reference to Memphis.

The Town of Memphis was created, December 9th, 1826, by an Act of the Legislature of the State of Tennessee. The first Section of which is as follows :

"SECTION 1. Be it enacted by the General Assembly of "the State of Tennessee, that the Town of Memphis, in the "County of Shelby, and the inhabitants thereof, are hereby "constituted a body politic and corporate, by the style and "name of the Mayor and Aldermen of the Town of Memphis, "and shall have perpetual succession; by their corporate "name may sue and be sued, plead and be impleaded, grant, "receive, purchase and hold real, mixed and personal prop- "erty, or dispose of the same for the benefit of the town, and "use a town seal."

Acts 1826, p. 126.

By an Act of January, 1845, the town of South Memphis was incorporated.

Acts 1845, p. —.

January 21st, 1848.—By an Act entitled, "An Act to re- "duce the several Acts incorporating the town of Memphis "into one Act, and to amend the same," the *City of Memphis* was incorporated.

Section 1 defines the boundaries thereof, under the name of the *City of Memphis.*

Section 2 grants various powers to said city, and provides

that it shall sue and be sued, buy, hold and sell property, improve streets, and do all things the same as a natural person.

Acts 1848, p. 114.

Again, December 3d, 1849, the following Act was passed, entitled—

"An Act to incorporate into one Act the several Acts in-"corporating the city of Memphis and the town of South "Memphis, passed January 6th, 1846, and January 21st, 1848, "and to unite the said towns into one, and extend the boundaries thereof."

Section 1 defines the boundaries of said city, by the name of "the *City of Memphis.*

"SECTION 2. The inhabitants of the city of Memphis, as "above laid out and extended, are hereby constituted one cor-"poration and body politic, by the name and style of the "Mayor and Aldermen of the city of Memphis; and by that "name they shall have succession for ninety-nine years; may "sue and be sued in all courts of law and equity; may pur-"chase, receive and hold property, real and personal, within "said city, for public schools, for market-houses, public squares, "streets, alleys, wharves, prisons, work-houses, water-works "and gas-works, and may sell, lease, rent and dispose of the "same for the use and benefit of the city; may purchase, re-"ceive and hold property beyond the limits of the city for the "burial of the dead, the erection of water-works, the estab-"lishment of magazines, poor-houses, work-houses, or houses "of correction, and may sell, lease, rent or dispose of the "same for the use and benefit of the city. And they may do "all other acts touching, *the same as natural persons,* and may "have a common seal."

Acts 1849–50, p. 8.

Section 9 gives power to said city for various purposes, including the power to levy and collect taxes, improve streets, etc., etc.

Acts 1849–50, pp. 10–11.

"Section 10. The Mayor and Aldermen shall have au "thority, * * by the subscription of the Mayor on the

"books of the Memphis and Charleston Railroad Company, "to subscribe for any sum not exceeding five hundred thou- "sand dollars of the capital stock of said Company, or to sub- "scribe that amount for any road leading from Memphis, and "connecting with the South Carolina and Georgia works; * * "and that the Mayor and Aldermen of the city of "Memphis be and are hereby authorized to raise money on "loan by *pledging the faith of the corporation*, by pledging a "portion of its taxes, by mortgage, or otherwise, as to them "may seem best, to any amount not exceeding what may be "demanded for the call upon the stock aforesaid; and said "loan may be created for such length of time, and payable "in such manner, as to the said Mayor and Aldermen may "be deemed best; also, the said Mayor and Aldermen be, "and they are hereby authorized, if to them it shall seem best, "instead of making a loan, as aforesaid for the whole amount "of said calls, or any part thereof, to issue the bonds of said "corporation, under its corporate seal, to be signed by its "Mayor and countersigned by its Recorder, for the whole "or any part of its calls which may be made, from time to "time, by said Railroad Company on said stock; that the "bonds so to be issued shall be in sums of not less than five "hundred thousand dollars each; that they shall not have a "greater rate of interest than six per centum per annum, and "shall not be payable at a greater distance of time from their "respective dates than thirty years."

Acts of 1849–50, p. 12.

Again, by an Act of February 13, 1854, the charter of Memphis was amended:—

Section 1 defines its new boundaries.

Section 2 constitutes the same a body corporate, under the name and style of the Mayor and Aldermen of the city of Memphis, and gives it *perpetual succession;* to sue and be sued, to pave streets, alleys, etc., "*and to do and perform all "other acts as natural persons.*

Acts 1853–4, p. 286.

Section 1 gives power to the board of Mayor and Aldermen to levy and collect taxes for the purpose of defraying the expen-

ses of the city government, not exceeding one per cent. per annum; also, "*The Board of Mayor and Aldermen shall also "have power to levy and collect a special tax, for the sole and special "purpose of paying the interest, as the same may become due, on the "bonds authorized to be issued by the second Section of this article,* "for the purpose of funding and paying off the present due "debt of the city. *Said tax shall not be greater than may be ne-"cessary for the purpose; a separate account thereof shall be kept, "and the money received under it shall not be applied to any other "purpose whatever.* And it is hereby made the duty of each "and every Board of Mayor and Aldermen, immediately after "organization as such, to adopt an ordinance imposing said spe-"cial tax: and until such ordinance shall be passed and ap-"proved, no other ordinance or legislative act which they may "transact shall be lawful or binding, or have any legal force or "effect whatever." * *

Acts 1853–4, p. 201.

"Section 2. * * They (the Board of Mayor and Alder-"men) may issue the bonds of the city, having not less than "thirty years to run, and bearing not more than six per cent. "per annum, for the purpose of funding any or all of the pres-"ent due debt of the city, or that not yet due, but for which, "city bonds may have been issued. They may also, on like "terms as to time and rate of interest, issue the bonds of the "city to the Memphis and Little Rock Railroad, or to any rail-"road companies in which the city has taken stock," etc. * *

Acts 1853–4, p. —.

"Section 3. They (the Board of Mayor and Aldermen) "may also, on like terms as to time and rate of interest, issue "the bonds of the city for the purpose of aiding in the construc-"tion of these or any other railroads leading into or near "Memphis, "etc., etc.

Acts 1853–4, p. 292.

Again, by an Act of February 29, 1856, entitled, "An act "to amend the Charter of the United Firemen's Insurance "Company, of Nashville, and for *other purposes*," the Charter of Memphis was further amended, as follows:

"Section 10. Be it further enacted, that the Board of May-

"or and Aldermen of the city of Memphis shall set aside "semi-annually, in the months of January and July of each "year, a sum not less than five thousand dollars, to be called "the 'Memphis Sinking Fund," *which shall be exclusively ap- "plied to the purpose of retiring any of the bonds of the city of "Memphis,*" etc., etc.

Acts 1855–6, p. 532.

Again, by Act of February 20, 1860, the Charter of Memphis was further amended:—

"Section 3. Be it further enacted, that the Board of "Mayor and Aldermen of said city of Memphis shall have "power to issue time bonds of said city, having not over "thirty years to run, payable in such city in the United States "as in the discretion of said Board will enable them to be ne- "gotiated on the best terms, having interest coupons attached, "as follows:

"1. For purpose of erecting water-works, $500,000.

"2. To constructing pavements, $500,000.

"3. To aid in constructing railroads from Memphis to St. "Louis, $500,000.

"4 To the Mississippi and Tennessee Railroad, $250,000.

"5. To Memphis and Ohio Railroad, $250,000.

"6. To Memphis and Little Rock Railroad, $250,000.

"7. For funding the debt of the city, $250,000.

"And then no such bonds as specified in the first, second, "third and sixth classes above, shall be issued until and unless "said Board of Mayor and Aldermen first, before such issue, "provide by ordinance for the regular and prompt payment "of the annual interest on said bonds, and also provide an "annual sinking fund to commence at least within six years "after the issuance of the bonds, and sufficient in amount to "retire or redeem the same by maturity."

Acts 1859–60, pp. 280, 281.

Again, by an Act entitled, "An act to incorporate the "Mississippi and Tennessee Railroad Company," power is

given the city of Memphis to issue bonds to the amount of $150,000 to said Company.

Acts 1853–4, p. 35.

Again, November 24th, 1866, the charter of said city was further amended, and, among other things, as follows:

"They (the Board of Mayor and Aldermen) shall also have "power for the purpose of making any public improvements "that may be deemed necessary for the city, or for acquiring "any property for the public use of the city, to issue the "bonds of the city, bearing interest not to exceed eight per "cent per annum, and having not more than thirty years to "run."

Ch. viii., Sec. 3, Private Acts 1866–7, p. 16.

Again, by an Act of the Legislature, passed December 3d, 1867, the charter of said city was further amended:

Section 4 provides, "That the Board of Mayor and Alder- "men, for the purpose of Funding the debt of the city, shall "have power to issue the bonds of the city, bearing interest "at the rate of six per cent. per annum, and having not more "than thirty years to run." * *

Private Acts 1867–8, Ch. 36, Sec. 4, p. 66.

No limit to the amount of bonds.

Again, by an Act entitled, "An Act to amend the charter "of the town of Morristown," the charter of Memphis was further amended, as follows:

"Section 5. Be it further enacted, that the said Board shall "at the beginning of each corporate year, *levy a special tax to "pay the interest on the bonds of the city, of whatever description, "which said tax shall be collected in money, and held for the sole "purpose of paying said interest;* and said interest shall be paid "in equal parts, semi-annually, payable on the 25th day of "May and November; and if not paid within thirty days "from either date, then a penalty of five per cent. shall be "imposed on the amount of taxes due for said interest; *and the property on which said interest is levied, shall also be subject*

"to the same powers, penalties and provisions, now and hereafter "existing for the collection of State and County taxes.

Private Acts 1867–8, ch. cii., Sec. 5, p. 248.

Again, December 1st, 1869, by an Act of the Legislature entitled, "An Act to reduce the charter of the city of Mem- "phis, and the several Acts amendatory thereof, into one Act, "and to revise the same," the said charter of Memphis was re-enacted and amended:

Section 1 incorporates the inhabitants of Memphis into a body corporate, and gives them perpetual succession, etc., etc., with all the usual powers, and some that are not usual.

Acts 1869–70, p. 225.

Section 2 defines the boundary.

Acts 1869–70, pp. 225, 226.

"Section 4. Be it further enacted, that the legislative "powers of the city of Memphis shall be vested in a Mayor, "a Board of Common Councilmen, and a Board of Alder- "men, which together shall be styled the *General Councel* of "the City of Memphis." * *

Section 52. *Be it gurther enacted, that the General Counoil "shall have power in addition to levy and collect a special tax, "for the sole and special purpose of paying the interest, as the "same may become due, on the bonds issued or to be issued by the "city. The said tax shall not be greater than may be necessary for "the purpose. A separate account thereof shall be kept; and the "money received under it shall not be applied to any other purpose "whatever."*

Acts 1869–70, p. 226.

Section 54. Be it further enacted, that the General Council shall have power to levy and collect a *special tax*, not to exceed one-half per centum, or fifty cents on every one hun- "dred dollars of taxable property, *for the sole purpose of "creating a sinking fund*, to be used for the purpose of "retiring the bonds of the city, as the same may become "due.

Acts 1869–70, p. 238.

Section 61 empowers the city to issue bonds to railroads, for public improvements, or acquiring property, or for funding the debt.

Acts 1869–70, pp. 240–261.

There are many other provisions in said Act, which we deem unnecessary to refer to specifically.

Again March 2d, 1870, said charter was further amended:

Section 3 provides that all taxes, of every character, which "may be assessed or which may be collected, the city of "Memphis, shall be payable in gold and silver coin, or in any "other lawful money of the United States, and no scrip, "coupon or other indebtedness of the city of Memphis shall "be receivable therefor.

Private Acts 169–70, p. 632.

Again, by chapter 67, p. 102, Acts 1873, the charters of incorporated towns and cities in the State were further amended; said Act applying to Memphis, by which power was given to levy a special tax to pay for cost of improvements under acts which had been declared unconstitutional.

Acts 1873, p. 102.

Again, by Act of March 25th, 1873, by an Act entitled, "An Act to provide for the sale of lands which have been "sold for taxes due municipal corporations in this State, and "bought in by said corporations," *power is given to said corporations to file bills in coruts of equity to enforee liens for taxes past due, conferring power of sale of land under decree to pay for same, etc.*, conferring power on Chancery Court.

Ch. 102, Acts 1873, pp. 154–157.

Also, by Act of March 22d, 1875.—"An Act to provide "for the increase and diminution of the powers of munici- "pal corporations," which applies to the city of Memphis, the charter was amended.

Section 12 provides for the issuance of coupon bonds, for *funding purposes*, to the amount of $300,000.

Acts 1875. Ch. 59, Sec. 13, p. 62.

Again, by an Act of the Legislature, approved March 23d, 1875 (Acts 1876, p. 136), entitled, "An Act to regulate "and organize municipal corporations of certain population, "and for the increase and diminution of their powers," which, although a general Act, applies alone to Memphis, from Section 33 to Section 82, inclusive, said charter was further amended in many particulars. But we will only notice the following:

Section 34 defines legislative power.

Acts 1875, p. 148.

Section 42 provides: "The present ordinances of the city "of Memphis shall be in full force until they are repealed or "modified by the General Council."

Acts 1875, Section 42, ————, p. 152.

"Section 66. Be it further enacted, that in order to collect "all the taxes due the cities, and pay all the indebtedness "the cities owe, preparatory to the taking effect of this Act, "all cities shall receive in payment of all taxes that may be "due, or that have accrued up to the first day of January, "1875, all their past due indebtedness, except past due bonds "of the city, a special fund having been provided for their payment; but all taxes falling due after the first day of "January, 1875, shall be payable in current funds; or in past "due indebtedness of the city for the current year in kind, "or such as the tax for which it is received might be applied "after collection."

Section 70. "All taxes *assessed upon real estate within the "city shall be a lien upon such real estate.*

And further provides for distress warrants for collection of taxes.

Latter part of Section —

Acts 1875, p. 162, Section 70.

Section 79, provides that, "There shall be a digest of the "ordinances of the city which are of a general character, "published every three years under the direction of the Gen- "eral Council, and whenever so published, shall be read as "evidence in all the courts of the State without proof.

Acts 1875, Section 70, p. 166.

Again by ch. 10, Acts 1877. "An act to authorize municipal corporations to settle their indebtedness.

By which it is provided that said municipal corporations may settle their indebtedness, at the rate agreed between them and their creditors, but not however to exceed 55 cents on the dollar for judgements, and fifty cents on the dollar for every other class of indebtedness.

Acts 1877, Section 11, p. 13.

Section 2 empowers the city, upon the surrender of the bond or other evidences of debt, by the creditor, to issue in the corporate name a new bond or bonds, at the rate agreed as aforesaid.

Section 2, p. 14.

Section 3–4 describes the character of the bond to be issued, and that it shall not have more than thirty years to run—Section 3–4 p 14.

Section 5 provides, "that in consideration of the surrender "on the part of the creditor of the portion of the debt due to "him from said town or city, it is expressly declared, that "the coupons attached to the bonds issued under this act, and "also the bonds, if not paid at maturity, shall be receivable at "par by the town or city issuing the same, in the payment of "taxes levied on real or personal estate, or in payment of any "privilige or license tax, or in payment of any other debt, or "demand due and owing to said town and city, it being the "intent of this act, that any over due or unpaid bond or coupon issued as aforesaid, shall always be receivable at par, "whensoever, by whomsoever, and on what account soever "tendered, in satisfaction of all taxes, charges, rates or assessments levied or imposed on persons, priviliges or property, or in satisfaction of any other debt or demand due and "owing to said town or city.

Acts 1877, section 5, p. 14–15.

Section 6, provides, "that an ample interest and sinking "fund tax shall be collected, to meet the maturing interest and "to pay the bonds on maturity; and that his tax shall be faith-

"fully applied to the objects proposed. Three sinking fund "Commissioners shall be appointed, to whom the sinking "fund tax shall be paid; and three interest Commissioners "shall be appointed, to whom the interest tax shall be paid; *"the Commissioners in every case shall give bond for the faithful "execution of their trust.*

Act 1877, Section 6, p. 15.

The City of Memphis by ordinance for 1877 and 1878, levied a special interest tax to pay the interest on these compromise bonds. Part has been collected, and between $60.000 and $80.000 of this tax uncollected.

Record page 12–13, Gantt bill 53, Fairman Rogers bill. *$1.000.000 of the compromise bonds were issued.*

Again by act March 23, 1877.

By an act entitled "an act to enable municipal corporations "having more than 35.000 inhabitants to settle their indebted-"ness," which was applicable to Memphis, its charter was further amended.

Section 2 provides * * "That by virtue of Article "11, Section 9 of the constitution of the State, in addition "to the powers already conferred, the Chancery Court for "the purpose of settling the indebtedness of Memphis and "other municipal corporations containing more than 35,000 "inhabitants may appoint a receiver, and exercise such oth-"er powers as are hereinafter set forth.

Acts 1877, Section 2, p. 89.

Section 3. "*Be it further enacted*, That upon the applica-"tion of any person or persons, who are the holders and "owners of any past due and unpaid bonds, coupons, or "other indebtedness of said municipal corporations, not less "in amount than $100,000. It shall be the duty of the Chan-"cery Court to appoint a Receiver for said Municipal Cor-"porations, who, as the officer of the Court, and not other-"wise, shall, under the *orders and instructions of the Court, and "not otherwise act for such Municipal Corporations.*

Acts 1877, p. 89.

The next act was approved January 31st, 1879, which is entitled "an act to repeal the charters of certain Mmnicipal "Corporations, and to remand the territory and inhabitants "thereof to the Government of the State.

Section 1–23, in terms repeals all acts of the Legislature, "incorporating Memphis.

Acts 1879, Ch. X, p. 13.

Section 4, 1st abolishes all offices held under and by virtue of the repealed statutes. 2nd vest the taxing power in the Legislature, withdrawing said power from such corporations.

3d. "And the public buildings, squares, prominades, wharfs, "streets, alleys, parks, fire engines, horses, hose, and "carriage horses, and wagons, engine houses, engineer "instruments, and all other property, real and perso- "nal, hitherto used by such corporations for munici- "pal purposes, are hereby transferred to the custody, "and control of the State, to remain public property, "as it always has been, for the uses to which said property "has been hitherto applied. *And no person holding office under "and by virtue of said repealed sections, or any of the acts above "recited, shall, from and after the passage of this act, exercise or "attempt to exercise any powers or functions of said office.*

Public Acts 1879, Section 4, p. 15.

The next act, although in terms general, the same as the last referred to, was intended to apply to Memphis alone, and was approved January 31st, 1879, and is entitled "a bill "to establish taxing districts in this State, and to provide "the means of local government for the same.

Section 1, creates the inhabitants and territory of the Municipal Corporations, whose charters have been repealed into "taxing districts."

Section 2–3, defines some of its powers.

Section 4, *grants lagislative powers to* the Police Commissioners of such districts.

Acts 1879, p. 17–18–19.

Section 12, expressly prohibits the governing agencies of

said district from levying any taxes for any purpose whatever, but lodges the said taxing power in the legislature of the State.

"*And no writ of mandamus or other process shall lie to compel "them (the Police Commissioners) to levy any taxes; nor shall the "said Commissioners or said Trustee, nor the local government "created by this act, pay or be liable for any debt created by said "extinct municipal corporation, nor shall any of the taxes collected "under this act, ever be used for the payment of any of said debts.*

Acts 1879, p. 25.

Section 14 is as follows:

Be it further enacted, That the fire engines, hose and carriages, horses and wagons, engine-houses, public buildings, public squares, parks, prominades, wharfs, streets, alleys, engineer instruments, and all other property, real and personal, hitherto used by such corporations for purposes of government, are hereby transferred to the custody and control of said Board of Commissioners, to remain public property, as it has always been, for the uses to which said property has been hitherto applied, and that all indebtedness for taxes or otherwise, whether in litigation or otherwise, due to the said municipalities, shall vest in and become the property of the same, to be disposed for the settlement of the debts of said extinct municipalities as shall hereafter be provided by law, and all suits now pending shall be prosecuted to final determination under the provisions of this act, without change of parties and all suits brought by said Taxing Districts shall be brought in the name of the President of Fire and Police Commissioners; *provided*, however that the taxes heretofore assessed as privilege taxes, and set apart for the payment of the police and firemen, shall be paid out as collected under the provision of this act, to the said police and firemen. * * And although general in its terms, in fact applies to Memphis alone.

Acts 1879, p. 25–25.

There are many other provisions in said act not deemed material to notice here.

The next act deemed important to notice, was approved March 14th, 1879, and is "*An act*, to collect and dispose of "the taxes assessed for Municipal Corporations in this State "whose charters have been or may be repealed, or which "may surrender their charters, and to provide for the com- "promise and make settlements of the debts of such extinct "Municipal Corporations respectively. This act is commonly known as the receivers act, under which Appellant Meriwether claims.

Section 1–2, provides for the appointment by the Governor, of a Receiver and back tax collector for such Municipal Corporations whose charter have been repealed, and for reports to be made by him to the Chancery Court, &c.

Acts 1879, p. 127.

Section 3 empowers said Receiver, when qualified, to take possession of all books, papers, and documents pertaining to the assessment and collection of the taxes embraced in this act

Section 3, p. 128.

Section 4, empowers the State Receiver to file a general creditors bill in the name of the State in behalf of all creditors, against all the delinquent taxpayers, who owed taxes to the extinct corporation at the time of the repeal of its charter. * * It gives the Chancery Court, "*in exercise of the* "*jurisdiction conferred by this act, all the powers posseesed by such* "*courts, in the administration of insolvent, natural or corporate* "*persons.*

If it shall appear that the taxes imposed in any case were excessive, the Court shall have the power to reduce the assessment, so as to make it fair and just.

Latter part Section 4, p. 128–9.

Section 5, provides, that taxes due prior to March 20, 1875, shall be collected by the Receiver in any past due valid indebtedness of such extinct corporation, at fifty cents on the dollar, except compromise bonds, which must be received at par value.

"And it shall be the duty of such Receiver and back tax

"collector to receive in payment of taxes imposed after 1874.
"Any of the aforesaid valid indebtedness of the extinct muni-
"cipality, when there is no lien or equity requiring the same
"to be paid in current money. * * * * *

Acts 1879, pp. 129–130.

Section 6. "*Be it further enacted*, That when collections "have been made, or taxes paid, as herein provided, or in "current, or in lawful money of the United States, it shall "not be lawful for such Receiver and back collector to co-"erse payment of a greater sum than *one-fifth part annually*, "so as to distribute the whole through five equal annual "installments. The said period of four years, shall begin "from the time of the appointment and qualification of the "back tax collector and receiver, and all costs of condemna-"tions, penalties, and charges, are hereby remitted in all ca-"ses where taxes are collected under this act; *provided, how-"ever that nothing herein contained is intended to interfere with "any vested rights* which entitles the party having such right "to have a speedier collection, but only to extend the indul-"gence when the State has the power to do so without inter-"fering with vested rights.

Acts 1879, Section 6, p 130.

Section 11. "Be it further enacted that nothing herein shall "be construed to prejudice the right of redemption now al-"lowed to any person for redeeming land hitherto sold for "taxes, or that may hereafter be sold under the provisions of "this act, *as to all lands within the limits of such extinct* munic-"ipalities herctofore sold for taxes and bid off in name of the "State or the City, the former or their heirs and vendees, "*shall have five yeare* from and after the passage of this act, "within which to redeem the same, but until such redemp-"tion such property shall be and remanin the property of "the State, and the owners, their heirs or vendees shall alone "have the right to redeem.

Acts 1879, Section 11, p. 132.

Revenue acts applicable to the City of Memphis, and ordinances thereof.

Acts 1853-4, p. 28.

"All taxes assessed upon real estate within the city shall "be a lien upon such real estate, superior to all other claims "whatsoever from the time the same are assessed.

Art. 5, Section 4.

Acts Dec., 1st, 1869:

Section 57. "Be it further enacted that all taxes asssess- "ed upon real estate within the city shall be a lien upon "such real estate, superior to all other claims whatever, "from the time they are assessed."

Acts 1869-70—Section 57—p. 239.

March 25, 1873—Section 26. "Be it further enacted that "the assessed taxes on all real estate, and all penalties and "costs accruing thereon shall be, and remain a lien on such "real estate, from the 10th day of January of each and ev- "ery year, and this lien shall extend to each and every "part of all tracts, or lots of land, notwithstanding any di- "visions or alienations thereof.

Acts 1873, Section 26, p. 176.

Acts of March 25, 1873, provides

"That the city may file bill in the Chancery court, to col- "lect past due taxes and enforce liens thereon.

Acts 1873, p 154-157.

Code of Tennessee, Section 554-556, gives lien for taxes in an ample form.

See also 11 Hump. p. 130.

Looney vs City of Memphis, MSS.

Acts 1875, March 23d.

Section 70. "All taxes assessed upon real estate within "the city shall be a lien upon such real estate.

Acts 1875, Section 70, p. 162.

Section 75. "Be it further enacted, that in the event that "the State laws should hereafter be so changed or amended "as to provide a more efficient and speedy remedy for the "collection of revenue than is herein provided, then may the "city counsel by ordinance adopt the State laws, and col-

"lect the revenue of the city in the same manner as the State "revenue may be collected. The city council may also "adopt the assessment laws of the State.

By act March 14, 1868.

Section 4. It is provided, that at the time at which the State and County taxes are, or shall be, due by law shall also be the time when the city taxes shall be due; and the same powers, penalties and provisions of law now and hereafter existing, for and concerning the collection of State and County taxes, shall be applicable also to the collection of city taxes; and the same shall be applied by the officers and authorities of the city, as fully as by those of the State and county, and same rights shall obtain thereunder; and these provisions shall apply to the taxes unpaid as well as to those hereafter to be levied.

Private acts 1867-8, Section 4, p. 247-8.

Again, Section 209, printed ordinances 1873, adopts the State law as follows:

Section 209. "All the various remedies provided, or that "may be provided, by the laws of the State of Tennessee for "the collection of the State or County or other taxes, be and "the same are hereby adopted, and the laws governing the "same are declared to be in force for the collection of all "taxes that are or may be assessed, or are or may become "due to the City of Memphis, and, in addition thereto, the "City Attorney shall, when so directed by the Mayor, file "bills in the name of the City of Memphis in the proper "Court of Chancery for the enforcement of the lien reserved "by the City Charter; or the City Attorney, when di-"rected by the Mayor, shall bring an action against any "delinquent tax-payers, in the name of the City of Memphis, "for such amount as may be due from him or her.

Act Dec., 1st, 1869, Section —

"The ordinances published under the direction of the Gen-"eral Council are admissible in all the courts without proof.

Section 79, ch. 92, p. 166, Acts 1875.

To the same effect

Acts 1875, Section 79, p 166.

ARGUMENT.

We shall take up in order the questions certified, in so far as we deem it necessary to notice them, combining in some instances, perhaps, several questions under one head.

I.

Whether, inasmuch as the first of these original bills filed in these consolidated cases, was filed in this Court prior to the 29th of January, 1879, the date of the Act of the General Assembly of Tennessee repealing the charter of the city of Memphis, this Court has or had any power to repeal the charter of the city of Memphis, this Court has or had any jurisdiction to seize and empound any of the assets, revenues and properties of the corporation in being, described in Complainant's bill, and to place those assets, revenues and properties in the hands of a Receiver appointed by the Court to collect, administer and disburse the same in the payment of creditors of such corporation?

1st. By the Act of March 23, 1877, Acts 1877, Chapter 71, pp. 88—91,—

It is provided, "that by virtue of Article 11, Section 9, of "the Constitution of the State, in addition to the powers "already conferred, the Chancery Court, for the purpose of "settling the indebtedness of Memphis and other municipal "corporations containing more than 35,000 inhabitants, may "appoint a Receiver, and exercise such other powers as are "hereinafter set forth."

Section 2, p. 89.

"That upon the application of any person or persons who "are the holders and owners of any past due and unpaid "bonds, coupons, or other indebtedness of said municipal "corporations, not less in amount than one hundred thousand "dollars, *it shall be the duty of the Chancery Court to appoint a "Receiver for said municipal corporations, who, as the officer of the "Court, and not otherwise, shall, under the orders and instructions "of the Court, act for such municipal corporations.*

Acts 1877, Sec. 3, p. 89.

January 28, 1879. Robert Garrett & Sons, and others, filed

their bill under the above act, as well as under the general law, for the appointment of a Receiver, alleging the exact state of facts stated in the Act.

Record, pp. 3, 4.

To this part of the bill the defendants have demurred,—which admits the allegations of the bill, and the *only* question that we conceive can arise, is as to whether said Act is constitutional; for if it is, we apprehend that any Court of Equity sitting in Tennessee, having *jurisdiction* of the *parties* and the *amount*, the jurisdiction and power to appoint a Receiver follows—as the subject matter is a Trust.

IS THE ACT CONSTITUTIONAL?

The act is entitled "An act to enable municipal corpora-"tions, having more than 35,000 inhabitants to settle their in-"debtedness.

Art. 11, Section 9, of the Constitution of the State of Tennessee is as follows:

"The Legislature shall have the right to vest such powers in the Courts of Justice with regard to private and local affairs as may be deemed expedient.

In the case of Lurhman vs the Taxing District, decision of the Supreme Court of Tennessee unreported, but to be reported in 2 Lee, page——

The Court held that the act of January 31, 1879, ch. 10, p. 13, acts 1879, and the other act of January 31st, 1879, ch. 11, p. 15, acts 1879, were not unconstitutional, though confessedly applying to but one corporation in the State of Tennessee and that said acts were not in conflict with art. 11, Section 8, of the said Constitution, which is an inhibition against special Legislation—and not in conflict with Art. 2 Section 17, of the same instrument, because containing more than one subject.

This act of the Legislature simply invested the Chancery Courts with such powers with regard to private local affairs as was thought expedient and is in pursuance of Section 9, of Art. 11, of the Constitution, above quoted.

One of the powers conferred by the act is the appointment of a Receiver, in certain contingencies, which appointment is certainly a judicial and not a legislative function, and for this purpose we can see no constitutional objection to that part of the act.

But we maintain that under the facts of malfeasance, and refusal on the part of the officers to act who were the trustees for the collection of the special taxes, belonging to complainants as alleged in the original bill of Garrett and others, this court had jurisdiction to remove the trustees and appoint its own officer to collect the fund—and particularly is this so, as it is alleged that these special mandamus taxes claimed by complainants, were levied under the order of the Circuit Court of the United States to pay judgments, orders and decrees even while the municipal corporation was in possession of all the legal powers.

Again, it has been insisted that said act of the Legislature is in conflict with Art. 2, Section 2, Constitution of Tennessee, which is as follows:

"No person or persons belonging to one of these de-"partments, shall exercise any of the powers properly "belonging to either of the others, except in the cases "herein directed and permitted.

ARMSTRONG VS. THE STATE 3D SNEED, 634.

Cooley on taxation, pp. 33–34, are relied on as sustaining this position. In 3d Sneed case it will be seen that under a constitutional provision of 1834; the legislature was alone given power to grant charters of incorporation; and the act of the legislature under discussion, sought to confer that power on the courts and was declared to be unconstitutional, because under the organic law that power was solely intrusted to the legislative department of government; that is the gist of the case; and hence it will be readily seen does not apply to the part of the act which authorizes a Court of Chancery to appoint a *Receiver*.

Nor does the citation from Cooley on taxation, sustain the position; *and* if the *portion* of the act which authorizes the Court to appoint a Receiver in itself, be not obnoxious to any constitutional provision under well settled principles of law that portion will *be held valid*, although other features of the same act may be unconstitutional.

This bill having been filed prior to the repeal of the said act and the charter of Memphis, such repeal can have no effect on this proceeding whatever, because; *by Section* 49 of the code of Tennessee, it is provided.

"The repeal of a statute does not affect any right which accrued any duty imposed, any penalty incurred, nor any proceeding commenced, under or by virtue of the statute repealed."

See Sections 44–45–46. Code.

Richardson vs the State 3 Coldwell. 122.

The same principle has been applied by this Court in Memphis vs. United States, 97, U. S. 293–4.

Section 8, Article 11, Constitution of Tennessee provides that, "No corporation shall be created or its powers increased or diminished by special laws; but the general assembly shall provide by general laws for the organization of all "corporations hereafter created, which laws may at any time be altered or repealed."

"And no such alteration or repeal shall interfere with or divest rights which have become vested."

After a right has accrued under a statute, it becomes vested, and no repeal can effect it; it stands independent of the act.

Steamship Company vs. Joliffe, 2 Wal 450–457–458.

We contend that a fair construction of this Act fails to show that the intention of the legislature was to confer this power alone on the Chancery Court of the State; for reading the words as they appear in the statute, the power to appoint a Receiver is conferred upon the Chancery side of the Cir-

cuit Court of the United States equally with that of the State Court. It may be claimed on our part, with equal propriety, that the Chancery Court referred to in the Act, was intended to apply to the Federal tribunal, and not to the State Court: but we submit that the words used are to be taken in their broadest sense, and the intention was to have them apply to both the State and Federal Courts.

But suppose the intention was to confine this jurisdiction alone to the State Court; can the legislature restrict controversies between citizens of different States, to the State tribunals, and thus violate the act of Congress, which guarantees to non-residents the right of trial in the Federal tribunals."

In the case of the Railway Company, vs. Whitton 13 Wallace 286, this being a right of action which existed alone by statute, and in which the right of action was confined alone to the State Court, it is said: "In all cases where a general "right is thus conferred, it can be enforced in any Federal "tribunal within the State having jurisdiction of the parties."

Again, an Act of the State of Alabama provided, that an estate of a deceased person declared to be insolvent, should be distributed according to the provisions of said Act, and no suit should be commenced against it unless brought in the State Court as provided by the Act.

But this Court held "that the constitutional right of a citizen of one State to sue a citizen of another State in the "United States Court, could not be thus interfered with. Sugdom vs. Broadnax, 14 Peters, page 67.

So in the case of Union Bank, vs. Jolly's Administrators, 18 How., page, 506, it is said, "That a law of a State limiting the remedies of its citizens to its own Courts, cannot be applied to prevent citizens from others States from sueing in Courts of the United States."

Also, in the case of Paine vs. Hook, 7 Wallace, page 425, it is held, "That equity jurisdiction and remedies conferred by the constitution and statutes of the U. S. cannot be limited or restrained by State legislation."

The case of Broderick's will, reported in the 21st of Wall, pages 519–520, the question arose as to the power of the Circuit Court to entertain a bill to annul and vacate the probate of a will probated by the Probate Court. It was admitted that at common law the Chancery Courts had no jurisdiction, neither had the State Chancery Courts, as such was exclusively within the jurisdiction of the eclesiastical Courts in England and with the Probate Courts in the different States of the Union. But says this Court: "The "statute of 1862 has been referred to, which gives to the "District Courts of California power to set aside a will obtained by fraud, undue influence, or a forged will, and any probate obtained by fraud, concealment or perjury, "whilst it is true that alterations in the jurisdiction of the State Courts cannot effect the equitable jurisdiction of the Circuit Courts of the United States, so long as the equitable rights themselves remain, *yet an enlargement of equitable rights may be administered by the Circuit Courts as well as by the Courts of the State. And this is porbably* a case *in which an enlargement of equitable rights is effected*, although presented in the form of remedial proceedings."

7 Wall 175 180

Hence, we maintain, that the Receiver was properly appointed under the original bill.

But suppose the Court should differ with us on the first proposition—then we submit.

II.

That under the facts alleged in the original amended and supplemental bills, filed in equity, the Circuit Court has the jurisdiction and power to impound the property and assets of a dissolved municipal corporation, and particularly trust property and funds, and appoint a receiver to take charge of the same and administer such assets and properties for the benefit of creditors, and enforce all liens for that purpose, where citizenship and amount involved sufficiently appear, as in this case.

Bacon vs Robertson 18 How 480 486, & Authorities Cited

cuit Court of the United States equally with that of the State Court. It may be claimed on our part, with equal propriety, that the Chancery Court referred to in the Act, was intended to apply to the Federal tribunal, and not to the State Court; but we submit that the words used are to be taken in their broadest sense, and the intention was to have them apply to both the State and Federal Courts.

But suppose the intention was to confine this jurisdiction alone to the State Court; can the legislature restrict controversies between citizens of different States, to the State tribunals, and thus violate the act of Congress, which guarantees to non-residents the right of trial in the Federal tri-"bunals."

In the case of the Railway Company, vs. Whitton 13 Wallace 286, this being a right of action which existed alone by statute, and in which the right of action was confined alone to the State Court, it is said: "In all cases where a general "right is thus conferred, it can be enforced in any Federal "tribunal within the State having jurisdiction of the par-"ties."

Again, an Act of the State of Alabama provided, that an estate of a deceased person declared to be insolvent, should be distributed according to the provisions of said Act, and no suit should be commenced against it unless brought in the State Court as provided by the Act.

But this Court held "that the constitutional right of a citi-"zen of one State to sue a citizen of another State in the "United States Court, could not be thus interfered with. Sugdom vs. Broadnax, 14 Peters, page 67.

So in the case of Union Bank, vs. Jolly's Administrators, 18 How., page, 506, it is said, "That a law of a State limi "ting the remedies of its citizens to its own Courts, cannot be applied to prevent citizens from others States from sue-ing in Courts of the United States."

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Bacon vs Robertson 18 How 480 486, & Authorities Cited

The several complainants (as herein before stated) were, and are, the holders and owners of the bonds and coupons issued by said corporation under *express power in its charter*, which statute giving the power to issue the said bonds, also provides that said corporation should, in *addition* to all other taxes allowed by law, to be collected: "*Levy and collect a special tax for the sole and special purpose of paying the interest on the same as it became due*," and sufficient for the purpose; and that "*a separate account thereof shall be kept, and the money received under it shall not be applied to any other purpose whatever.*".

And it was also provided that said corporation should *lay and collect a special tax* not to exceed fifty per centum, or fifty cents on every one hundred dollars of taxable property, *for the sole purpose of creating a sinking fund*, to be used in retiring the bonds of the city as the same may become due."

Acts 1853—4, p. 291.

Acts 1855—6, Sec. 10, p. 532.

Acts 1859—60, pp. 280—281.

"*Said tax shall be collected in money*," and if not paid, a penalty of five per cent. to attach, and the property on which levied subject to same powers, penalties and provisions, now and hereafter existing for collection of State and County tax.

Private Acts 1867—8, Ch. 102, Sec. 5, p. 248.

Acts 1869—70, Sec. 52—54, p. 238.

In pursuance of these Statutes, the General Council passed the requisite ordinances for the levy and collection of these special taxes, and under and by virtue of the statutes and ordinances, *up to the time of the dissolution* of the corporation there had been regularly levied, and remained uncollected of these special taxes as follows:

For *interest* on bonds, $228,255.96.

For sinking fund, $25,503.69.

Besides, some of this last tax, had been collected and was at the time in the hands of sinking fund commission-

ers, (Record, pp. 3—4, 52—53,) the above amounts were *for the sole purpose of paying the interest on and retiring all* the bonds of the city, and "could be applied to no other pur-"pose whatever."

The city of Memphis and its officers, and the *sinking fund commissioners* were *trustees* for the collection and disbursement of this *trust fund* and *property*, to complainants and other holders of the bonds, and nothing else. To us this seems too plain for argument.

But again. Under the Act of March 8, 1877, Ch. 10, Acts 1877, pp. 13—15, which provided for the issuance of funding bonds, over $1,000,000 of bonds were issued by said city, and the Act under which they were issued provided—

"That an ample interest and sinking fund tax shall be levied "annually and collected, to meet the maturing interest, and to "pay the bonds on maturity; and that *this tax shall be faithfully* "*applied* to the objects proposed, three sinking fund commis-"sioners shall be appointed, to whom the sinking fund tax shall "be paid, and *three interest commissioners shall be appointed, to* "*whom the interest tax shall be paid;* the commissioners in both "cases to give bonds for the faithful *execution of their trusts.*"

Acts 1877, Ch. 10, Sec. 6, p. 15.

Section 8, p. 15 provides, (which was unnecessary), that the provisions of the Act shall *form part of the contract* with the holders of bonds issued thereunder.

It will be seen that this Act, in *express* terms, makes the interest tax to be levied and collected for these bonds a *trust fund*, and the commissioners *express trustees* for the same, and we submit that the city of Memphis was also an express trustee in regard thereto, and that this would be equally so, whether the acts specifically denominated it a trust fund or not.

Under this Act an ordinance was passed by the city of Memphis levying an interest tax for 1877, *specifically* to pay the interest on these particular bonds, and appointing three *interest* commissioners therefor, to-wit, Neely, Eiseman and ————, who are made parties hereto by amended bill, on Record, p. 69.

Another interest tax for 1878 was levied for the same purpose; and of this tax levied for 1877, there remained uncollected, at date of dissolution, $61,795.71, besides a considerable amount, already collected and in the hands of the interest commissioners; and besides this, a tax for the same purpose for 1878—perhaps $60,000 more.

Record, pp. 3—5, 53.

The fund was expressly set apart for the *sole* purpose of paying the interest due to the complainants and others, who hold the *new compromise bond*. It could be used for *no other purpose*; it belonged to them, impressed with the trust created by the statute, and we submit as to it, both the city and the ~~sinking fund~~ commissioners were "*express trustees*." Can there be any doubt of equitable jurisdiction as to this fund?

But again. All the complainants in the Garrett bills, and nearly all in the other bills, are judgment creditors, *having* obtained the same on past due coupons and bonds of said city, in the Circuit Court of the United States for the District of West Tennessee; executions issued thereon, which were returned "nulla bona," and afterwards peremptory mandamuses issued to the city of Memphis, commanding it through its General Council, "*To assess and levy a special* tax, in addition to all other taxes allowed to be levied, and to provide for the collection of the same in lawful money of the United States, sufficient in amount to pay said several judgments respectively, interest and cost, and to pay over the same *as fast as* collected to the respective complainants on their judgments."

In pursuance of which mandates the city of Memphis by ordinance levied a tax to pay them, and each of them for the years 1875, 1876, 1877 and 1878. The ordinance for each year specifying the amount and the person for whom the levy was made; and called the same the "Sundry man–"camus tax" for each year; part of which for all the years except 1878, has been collected and paid over to the parties respectively; and some collected and in the hands of different defendants, not yet paid over to them, but since this suit paid over to the Receiver under orders of the Circuit Court.

But of these special taxes so levied there remains uncollected a large amount, as follows:

Sundry mandamus tax 1875 $56,375,32.

Sundry mandamus tax 1876, $36,585.52.

Sundry mandamus tax 1877, $90,814.61.

Sundry mandamus tax 1878, $308,578.16.

Besides these a sundry indebtedness tax to pay different parties holding claims against the city which stand on the same footing as the above.

And also, a special tax, levied under mandamus from the Circuit Court, to pay the large judgment of T. E. Brown—balance uncollected, about $367,859.68—part collected and in the hands of defendants.

R. pp. 15, 16, 17 and 51, 52 and 53.

All these funds which were collected and on hand at date of dissolution and the amounts uncollected are for the *specific and sole* purpose of paying complainants specific judgments, and could not be legally applied to any other purpose whatever—and as to them *as well* the money collected and on hand, as that uncollected, we submit that they are impressed with a *trust* in favor of the respective complainants, and the city was only the *agent of the Court and Trustee* for their collection and proper disbursement.

And we submit that of and over such a trust, a court of equity has jurisdiction, besides there are other special funds and taxes uncollected as shown in the bills, besides the large amount of general tax uncollected to be referred to again.

In addition to this the city had bought in at tax sales and held the title to a great many lots and parcels of land; thus matters stood, when—

January 31st, 1879, Acts 1879, p. 13–15, the Legislature assumed to repeal all statutes, all and singular, every statute hitherto passed with regard to Memphis, and declared its charter abolished, "and the territory thereof resolved back into the body of the State," and declared "*all offices held under*

any of said repealed statutes to be abolished;" and "*that no person holding office under and by virtue of any repealed sections, * * shall from and after the passage of this act, exercise, or attempt to exercise. any of the powers or functions of said office.*"

And by the 4th section, the public buildings and other property of a public character enumerated was transferred to the control of the State, etc.; but no disposition, or mention whatever was made as to the other properties, or these trust funds. They were left without any one authorized to take care of them.

By another subsequent act, approved January 31st, 1879, Acts 1879, pp. 15–30, the "taxing district" was created.

Section 14 transfers public squares and all other *public* property as therein specified, to the commissioners of said "district," "and all indebtedness for taxes, or otherwise, whether in litigation or otherwise to said municipalities *shall vest in and become the property of the State*, to be disposed of for the settlement of the debts of said extinct municipalities as shall be hereafter provided by law." No other provision was made as to these funds by these extraordinary acts.

It is seen that no provision or mention is made, anywhere in these statutes, of the large amount of these trust and general funds which was *already* collected and in the hands of the different officers abolished, and no agent or officer left or designated to take charge of it, or the books and assets of the city; its tax-books, its claims, and other property was left without any one to exercise control over any part thereof; and so it stood when the amended and supplemental bills were filed, to impound this property and appoint a Receiver to take charge of and protect the same from loss and destruction.

As to the specific funds on hand, and the special taxes levied and uncollected, the city of Memphis, its tax collectors and other officers, were trustees; and they having been abolished, and abandoned

"ment or waste of such fund by those entrusted with its con-
"trol will warrant the appointment of a Receiver.

High on Receivers, p. 304-305, note.

"The principal grounds for the appointment of a Receiver
"are, that the persons seeking relief have shown at least an
"interest in the property, and there is danger of loss.

High on Rec. p. 11

See High p. 399.

And in the case before the Court there was great danger of loss and irreparable damage, as there was no one left authorized to take charge of and preserve the tax and assessment books of the city, or its other property, or the *funds* on hand already collected, and if the tax books had been mutilalated, burnt or othorwise destroyed, all evidences of taxes due would have been goue, and but few claims could have been established, if any; besides no one was left to collect any part of the taxes due, and a great deal of the same being due on personal property, the owners could remove it and the tax claim thereby defeated.

Where bonds have been issued by a Municipal Corporation, with power to levy and collect a special tax to pay interest, money collected as interest on said bonds according to the statutes to pay the same "*is a trust fund for that purpose "and cannot be diverted, &c.*

Maenhout vs New Orleans, 2 Wood, 108.

So, too, where a Municipal Corporation was required to levy and collect a tax.

Ranger vs. City of New Orleans, 2 Wood. 128.

Referring to dissolved corporations: The code of Tennessee provides, Section .3426, "The Court shall appoint a Receiver with full power to take possession of all the debts and property, and sell and dispose of, collect and distribute the same among the creditors and other persons interested, under the orders of the Court."

See, to same effect, Sections 3431–4294–4295.

These were but in affirmance of the common law, and the

Circuit Court having juristiction may avail itself of the facilities, and means provided by the State for the purpose of securing to the parties interested, any rights they may have thereunder.

Rogers vs. Supervisors, 7 Wal., 780–781.

Davis vs. Gray, 16 Wal., 203–13, Wal. 296.

In the case of Brodericks will, 21 Wal. page 520, it is said: "That it is true that alterations in the jurisdiction of the State Courts cannot affect the equitable jurisdiction of the Circuit Courts of the United States so long as the equitable rights themselves remain; yet an enlargement of equitable rights may be administered by the Circuit Courts as well as by the Courts of the State, &c."

7 Wal 175 180

Corporations of every kind may be trustees for all purposes not foreign to their existence. If they misapply the fund or refuse to obey the decrees of the Court, the proper remedy is sequestration.

Perry on Trust's, Sections 42–43.

In Marr. vs. Bank of West Tenn., 4 Cold. p. 476, "The law seems to be well settled that whenever property is devoted by private contract, or by operation of law to special purposes, to be held for the use, benefit or security of a particular person, or class, it thereby becomes *impressed with a trust* character, and it is held in trust to answer the ends for which it was appropriated."

Mr. Adams in his work on equity, says: "When corporation property is directed to be applied, first to certain specific purposes, &c., a *trust attaches* on the property giving *jurisdiction in* equity to control every improper dealing by the corporation."

Adams Eq. 3 American Ed. p. 229.

Also, see People vs. Dubois 19, Ill. 223.

Then if we are right that a Court of equity has jurisdiction, of these trust funds supra, then we say, that having taken jurisdiction of the case for that purpose, or part of the case, it will take jurisdiction of the whole controversy, and dispose of the whole case.

Ober vs. Galagher, 3 Otto. 199–206.

1 Story's, Eq Juris. Sec. 64–455–67.

Windsor vs. McVey, 3 Otto, 282.

Burrows on Taxation, 281.

Wilcox vs. Jackson, 13 Peters, 511.

A.

The Court has the power to impound all the assets and property of the dissolved corporation, even treating them all as general assets, including unpaid taxes.

Broughton vs. Pensacola, 93 United States 269.

Curran vs. the State, 15 How., p. 307.

Bechwith vs. the City of Racine, 7 Biss. 142.

Dillan on Mun. Cor., Section 113.

Potter on Corporations, Sections 713–714–715.

Green's Ultra Vires, p. 654, note.

Maenhaut vs. New Orleans, 2 Wood 112–114.

In Potter on Corporations, Sec. 714–715, the rule is stated as follows: "Whatever technical difficulties exist in maintaining an action at law against a corporation, after its charter has been repealed, in the apprehension of a Court of equity there is no difficulty in a creditor following the property of the corporation into the hands of one not a bona fide creditor or purchaser; asserting his lien thereon, obtaining satisfaction of his debts—; the term property in this statute is held to include *real as well as personal property, which* may be *regarded* as settling the rule that real estate upon such dissolution does not revert to the grantor."

Again, this Court in the case of Broughton vs. Pensacola, 93 United States pp. 268–369, says: "The ancient doctrine, that upon the repeal of a private corporation, its debts were extinguished and its real property reverted to its grantors, and its personal property vested in the State has been so far modified, that a Court of equity will now lay hold of the proper-

ty of a dissolved corporation and administer it for the benefit of its creditors; and its contracts may be enforced so far by a Court of equity as to subject for their satisfaction *any property* possessed by the corporation at the time. In view of equity its property constitutes a trust fund pledged to the payment of the debts of creditors. "*And if a municipal corporation upon the surrender of its charter be possessed of any property a Court of equity will equally take posssession of it for the benefit of the creditors of the corporation.*

In the case of Curran vs. Arkansas, 307, it is said: "The "assets of a corporation are assets for payment of its debts, "and are trust funds for that purpose."

In Maenhaut vs. New Orleans, 2 Wood, 112—114, it is held that equity will control the application of a fund raised by taxation for a particular purpose at suit of parties in interest. On principle and authority we maintain that a court of equity has the inherent power, outside of any statute, to seize and impound all the assets, of every description, belonging to a dissolved corporation, and administer them for the benefit of creditors.

As to what constitute the assets of a dissolved Municipal Corporation, will be discussed hereafter.

B.

A Court of Equity has power to fully administer all the assets of a dissolved municipal corporation, for another reason, to-wit: A municipal corporation possesses a DUAL character—the one governmental legislative, or public; the other proprietary, or private. Over its first, or governmental aspect, which is political, the legislative control is said to be omnipotent, or supreme. But as to its second, or private character, under which it purchases and holds property, makes contracts, incurs debts and issues evidences thereof, borrows money, etc., it is "quo ad hoc, a "private corporation," and over this character of it the legislative power is not omnipotent.

Dillon, Mun. Cor. Sec. 39.
Angell & Ames Cor., Sec. 31, 33.
Cooley, Cor. Lim., pp. 251, 252.
Potter on Cor.

26 La ann 481
18 Cal 613
28 Mich 236

Atkins vs. Randolph, 234, 237, 239.

Moodalay vs. Morton, 1 Brown, Ch. *469, *471; Top. 412.

Bailey vs. Mayor New York, 3 Hill, 539, 540, 541.

Small vs. Danville, 51 Maine, 361, 362.

City of Louisville vs. University, 15 B. Mon. 666, 674, 675.

Jones vs. City New Haven, 34 Conn. 14,

Oliver vs. Worcester, 102 Mass. 500, 502.

Western College vs. City of Cleveland, 12 Ohio Stat., 377.

Gas Company vs. San Francisco, 9 Cal., 468.

City of Detroit vs. Correy, 9 Mich., 186—187.

Western Saving Society vs. Philadelphia, 31 Penn., Stat. 181–183.

County Commissioners vs. Docket, 20 Md., 476.

City of Louisville, 20 Commonwealth, 1 Duval, 298.

This case holds that *vacant* lots, *market houses*, *fire engines*, and the like, are *private* property.

Weightman vs. Washington, 1 Black, 50, recognizes this principle.

City of Richmond vs. Long, 17 Grat, 378–380.

De Voss vs. Richmond, 18 Grat, 345.

City of Dubuque vs. Ills. C. R. R., 39 Iowa, 63–65.

Smoot vs. Mayor of Wetumpka, 24 Ala., 120.

The above authorities illustrate, in various forms, the full and complete double character of a municipal corporation, and the connection between the two whilst it is in existence, and the complete power and control of the Legislature over the public character thereof. They further illustrate and define the private character of the same, establishing the proposition that, where the rights of creditors and debts exist, the Legislature cannot destroy the corporation to such an extent as to impair the obligation of coutracts.

These *contracts and the remedies existing at the time made, or some other equally adequate remedy for their enforcement,* are protected by the National Constitution, as well as by the Constitution of Tennessee from legislative interference, as to both characters of a municipal as well as a private corporation; this is the settled law of Tennessee as well as this Court.

See McCain vs. Easley, 4 Baxter, 520.

Mabry vs. Baxter, 11 Heisk., 686.

Dillon Cor., Section 114, Note 1.

Bacon vs. Robertson; 18 How., 480.

Now, assuming under the authorities that, in so far as a municipal corporation under the authority of the Legislature, buys and holds property, contracts with individuals, creates debts, issues bonds, and other evidences of the same, it is in all essential particulars a *private* corporation—the same as a bank or railroad company. That over the public character the legislative power is supreme; it may abolish, destroy, kill at will, but that the other or private character, so long as contracts, liabilities and creditors exist, is immortal, and can not be destroyed at will, but that this part must be kept in existence, until all its obligations shall have been discharged according to principles of equity and common honesty; then the inquiry is, what is the true status of the corporation after the act of the Legislature of January 31st, 1879, abolishing the charter, and all laws creating the same?

And in solving this question, it seems proper to bear in mind that the PUBLIC or quasi sovereign character of this corporation whilst it existed, gave many protections to the private side of the same, in its property and to its inhabitants or corporators, which no longer exist after the withdrawal of the political character of said corporation.

Whilst the municipal corporation exists in its full integrity, its public property can not be seized for

debt, whilst applied to PUBLIC use, the individual property of the corporator or citizen, can not be sequestered for a debt of the corporation. The corporator can only be compelled to pay any part of the debt by invoking the taxing power. All these benefits result to the private part of the corporation by reason of its connection with the political character.

Now, for the sake of argument, let us admit that the Act of January 31st, 1879, abrogated and annulled the charter of the city of Memphis. We MAINTAIN that it could only abolish the public or political character of the same; and in doing so it left the private side of said corporation, over which the Legislature is not omnipotent, standing as a strictly dissolved private corporation under the laws of the State of Tennessee, as well as the general law, and subject to all the pains and penalties of a dissolved private corporation.

And under this view of the case, a court of equity has full jurisdiction to impound its assets and administer the same, appoint a Receiver, collect in all debts due it, and distribute the funds to the creditors according to existing priorities, and to bring in the corporators and adjudge against them the amount necessary to pay balance of debts after exhaustion of assets on hand.

Now what is the settled law of Tennessee in such a case?

Section 1492, Code of Tennessee is as follows: "Whenever powers, franchises, and privileges have so been granted to a corporation, and they are not used, or are assigned to others, in whole or in part, such corporation shall not be dissolved, *unless* all the corporate property has been appropriated to the payment of its debts."

Sec. 1493. "All such corporations, whose charters expire by their own limitation, or are annulled by forfeiture, or *dissolved from any other cause*, exist as bodies corporate for the term of five years after such dissolution, for the purpose of prosecuting or defending suits by or against them, settling their business, disposing of their property, and dividing their capital stock; but *not* for the purpose of continuing their corporate business."

Sec. 1494. "Upon the dissolution of any such corporation, the managers of the business of such corporation, *at the* time of its dissolution, by whatever name known, are the trustee of the stock-holders and creditors, unless other persons are appointed by the General Assembly, *or by a Court of competent authority*, and are authorized to settle the affairs of the corporation, dispose of such property as is necessary to pay its debts," &c.

Sec. 1495. "*Such persons have authority to sue for, and recover the debts and property of such dissolved corporation in its corporate name*," &c.

Sec. 1496. "On application to a Chancellor, and making a proper case, the power of such trustee, *or any person appointed Receiver* of such dissolved corporation, may be continued for such length of time beyond *five years as the Chancellor* may judge necessary for the purposes contemplated in the three preceding Sections.

Sec. 1497 reserves the right to alter or repeal, "*but so as not "to destroy any vested rights.*"

For construction of the foregoing statutes, see Marr vs. Bank of West Tennessee, 4 Cold, 471.

Also, Meckle vs. Rochester City Bank, 11 Paige, Ch. 118.

Sec, 3000. "A party in whose favor a judgment or decree "is rendered against a corporation may sue out a *distringas* or "*fieri facias*, to be levied as well on the choses in action as on "the goods, lands and tenements of the corporation; *and in "case of levy on choses in action, the Court may appoint a Receiver "to collect the same*"

Section 3441. "Corporations are not dissolved by the trans-"fer or assignment to others in whole or in part of its powers, "franchises and privileges, unless all the property has been "appropriated to the payment of its debts; *and any creditor*, "for himself and other creditors, whether he has recovered "judgment or not, or any stockholder, for himself and other "stockholders, may file a bill under the provisions of this "chapter, to attach the corporate property, and have such "property applied to the debts of the corporation."

Sec. 3768. "The Courts of this State are all vested with "power for the safe keeping, collection, management and dis-"position of property in such Court, whenever necessary to "the ends of substantial justice, in like manner as Receivers "are appointed by Chancery Courts."

Sec. 4294. "The creditors of a corporation may also, with-"out having first obtained a judgment at law, file a bill in the "Court of Chancery to attach the property of the corpora-"tion, and subject the same, by sale or otherwise, to the sat-"isfaction of their debts, when the corporate franchises are "not used, or have been granted to others in whole or in "part."

Sec. 2495. "In such cases the Court may appoint a *Receiver*, "take an account of the affairs of the corporation, and apply "the property and effects to the payment of the debts pro "rata, and divide the surplus, if any, among the stockholders."

For a full discussion of all the foregoing statutes, see—

Marr vs. Bank of West Tennessee, 471, 487.

See also on many points—

Ohio Life Ins. Co. vs. Merchants Ins. Co., 11 Hamp. 1, 31, holding that the capital stock is a trust fund, for the benefit of creditors.

As to what is the capitol stock and assets, will be referred to hereinafter.

The above proposition will come nearer giving to creditors a remedy adequate, if properly carried out, than any other; and under well-settled principles of law they are entitled to

property will defeat its collection, "though the property be burned the *debt* remained."

In Dubuque vs. Ills. C. R. R. Co., 39 Iowa, 61, the Court held that—"By the lawful levy of taxes in suit, which were asssessed against defendant, and not in rem. the defendant became personally bound for their payment. This obligation created a *debt* in the sense of the term when applied to a liability for the payment of money."

In Portland vs. Trustees, 12 B. Mon., 77, Taxes were declared to be a debt, and recovered in an action of debt. So too—

The imposition and assessment of a tax creates a legal obligation to pay, on which the law raises on implied promise.

1 Gill & John., 503.

"An action of debt lies to recover taxes."

Ryan vs. Galatin, 14 Ills., 83.

In Looney vs. City of Memphis, MSS., opinion of Supreme Court, Tennessee, the Court sustained a bill in equity on behalf of the city of Memphis, and enforced a lien for taxes levied by it.

Taxes have been held to be debts collectable by suit, either by action at law or bill in equity, as the nature of the case may demand in the following cases:

United States vs. Pacific R. R., 4 Dillon, 66.

Savings Bank vs. United States, 19 Wal., 227.

Merideth vs. United States, 13 Peters, 486.

Burrows on Taxation, 432–433–434–490.

In the Mayor vs. Towns, 5 Sneed, 186.

The Court held in effect that taxes assessed was in the nature of property, or a fund, which the Legislature had not the power to take from the county of Davidson and give to the city of Nashville.

It is also often provided by statute that the tax bills may

be turned over to contractors for work being done, who then stand in the place of the city and may sue.

Burrows on Taxation, 490.

And if statute can give an individual the right to collect taxes in his own name, *why* does not the law giving to creditors a lien upon all the assets of a dissolved corporation—empower them to enforce these tax liens through courts of equity.

Now, in the light of the foregoing authorities, we maintain that the general taxes duly assessed and levied by the city of Memphis, and due at the date of its dissolution constitute *debts*, which were due and collectable by the city when dissolved, just the same as any other *debt* due to it, and hence constitute assets for the psyment of creditors, and are collectable by a court of equity, either in the name of the creditors, or the Receiver appointed by the Court.

Of course the special taxes before mentioned in the brief, levied to pay complainants, can be enforced by a court of equity, because *impressed* with a *trust* in their favor.

2d. The Market Houses, Fire Engines, Engine Houses, Horses, Wagons, and other property including the City Hall and Squares, &c., which the corporation owned at the date of its dissolution are assets for the creditors.

It is true that this character of property, while the municipality possessed all its powers and functions was exempt by law from seizure, *because it was held and used by the city for corporate purposes*,

But upon the repeal of its charter, and the abolition of all its corporate franchises, the use by it of them for corporate purposes was at an end, and they were no longer under the protection of the law, yet they were the property of Memphis as a corporation, bought by her in her corporate name, she had the power to sell and dispose of them, or trade

them for some other property, more desirable if she chose.

Again, all these properties were purchased and acquired by Memphis in her private character, and are to be considered as private property.

City of Louisville vs. Commonwealth, 1 Duval 298.

Weightman vs. Washington, 1 Black. 50.

Cooley, Cons. Lein 235-236, 239.

1 Dillon Mun. Cor. Sec. 39.

This property was held and owned by the coporation for its own immediate profit and advantage as a corporation, although it inured to the benefit of the public.

Dillon Cor., Sec. 39, note.

102 Mass. 489—490.

Upon the dissolution of the corporation, the property thereof does not revert, but remains assets for creditors.

Broughton vs. Pensacola 93, United States 266–268.

If the repeal of the charter be valid, (and, as an abstract question of law, in "Luhrman vs. Taxing District," the Supreme Court of Tennessee has decided that it is,) then we can find no reason, either upon principle or authority, why all the property named in the several bills should not be subjected to creditors' claims. The State had no right to take it nor to give it to another corporation to the prejudice of creditors. The rule that "one should be just before he is generous," applies with full force here, *and especially as this whole legislation shows that it was conceived in fraud of a very flagrant character.*

IV.

Have the creditors of Memphis a right in equity to be subrogated to the rights of the city of Memphis as to claims for taxes, etc., due it at the date of dissolution, or in any way have these claims subjected to

payment of their debts? And if so, by what remedy?

We have seen that all taxes levied and due, either for State or municipal purposes, constitute a *debt*, and for the collection of which there is an express statutory lien, paramount to all other liens, and that the said debt is collectable either by *action at law or suit in equity*.

And we cannot see that under the law, there is anything in the position, that the *collection* of this kind of debt due a *disolved* municipal corporation is a governmental or legislative function. It may be, that as to general taxes the levy of the same is an act of soverignty or quasi soverignty, but the collection of the same is certainly not, for if they be a *debt* collectable at suit of the corporation, before its dissolution or insolvency, certainly a Court of equity administering the assets of such dissolved corporation, has the power to collect for the payment of creditors, and particularly when the tax was levied to pay the very debts and claims, and parties who are now creditors.

Marr vs. Bank [redacted] Tenn., 4 Cold. 471.

Can creditors be subrogated on this question?

See

Kyner vs. Kyner, 6 Watts 225.

1 Story's Eq., Sec. 493.

Burrows on Taxation, 275.

Wallace Estate 59, Pa. St. 401.

Catrells appeal 23, Pa. St. 295.

In Burrows on Taxation, 275, where taxes assessed on real estate which was a lien by statute, the *collector* paid the tax, and the owner confessed judgment to him for the amount. Soon the owner died, and the land was sold in the Orphan's Court, the colector claimed to be substituted to the benefit of the tax lien. The claim was refuted because, the *payment* by the collector discharged the lien at law. The Court saying while in equity it would be kept alive if justice required it.

Yet in this case the party claiming the lien stood in the light of a surety, it was his duty to collect the tax, he had means of so doing, and the payment was purely voluntary. The payment of taxes is a discharge of the lien at law, but if justice requires it, it will be kept alive in equity for the benefit of the paying party.

59 Pa. St. 401. Bisseus Taxation 275

Subrogation is founded on principles of equity and may be *decreed where no contract or priority of any kind exists between the parties.*

Cotrell's Appeal 23, Pa. St. 295.

Story's Eq. Sec. 493.

How can these liens be enforced, and the claims collected?

We have seen that these liens and debts for *assessed* taxes of Municipal Corporation, given by Statute, may be enforced, by bill in equity or by suit at law.

2 Yerg. 167, 3 Coldwell, 568.

Looney vs. City of Memphis MSS., opinion of the Supreme Court of Tennessee.

These were and *are* settled remedies for the collection of taxes in Tennessee, and this Court has said that "a party by "going into a National Court, does not lose any right or ap- "propriate remedy of which he might have availed himself in "the State Courts of the same locality, the wise policy of "the Constitution gives him a choice of tribunals."

Davis vs. Gray, 16 Wal, 203.

Railway Co., vs. Whitten, 13 Wal. 270.

McNeal Exparte 13 Wal. 270.

But again; *these taxes are not* only *debts*, but an express Statutory lien exists for their collection, and independent of statues or State decisions. A court of equity has the jurisdiction to enforce them,

V

Is the act of the Legislature passed January 29th, 1879, repealing the charter of the city of Memphis in violation of the Constitution of the United States or the State of Tennessee AS AGAINST CREDITORS HOLDING BONDS AND DEBTS CONTRACTED PRIOR TO THE REPEAL?

As has already been shown, these bonds were issued under express power conferred by act the Legislature, which contained express provision for the levy ofa special interest tax annually, sufficient to pay the interest as it matured, and a sinking fund was also provided to be levied to pay the principal when due, and under well established principles of law these statutory provisions, entered into, and formed a part of the contract with the creditors as also the remedies then existing for the enforcement of the same.

Van Hofman vs. Quincy 4, Wal. 535–554.

Supervisors vs. United States, 4 Wal. 435.

City of Galena vs. Avery, 5 Wal. 705–709.

Butz vs. Muscatine, 8 Wal. 579.

Dillon, Cor., Section 41–114.

Cooley Con. Sim. 292–293.

Walker vs. Whitehead, 16 Wal. 314.

And numerous other cases referred to.

The creditors are entitled to the remedy for the enforcement of their claims, which existed at the time of the contract, or to an *equally adequate one.*

The remedy existing at the time of contract, and the means for collection and payment was taxation; which, if the city refused to exercise, could be compelled by mandamus.

Now it is too apparent that the intent and object of this legislation was to defeat entirely the claim of the creditors, and take *away all remedy* for the collection of the debts, and thus not only *impair*, but totally destroy the obligation of all contracts, existing against the corporation.

This kind of legislation is wisely inhibited, by the provisions of the Federal Constitution, as well as the Constitution of Tennessee by Tennessee Constitution, Art. 1, Sec. 20, it is said: "No retrospective law, or law impairing the obligation of contracts, shall be made."

Section 8, of Article 11. * * "No corporation shall be created; or its powers increased or diminished by special laws; but the General Assembly shall provide by general laws, for the organization of *all* corporations hereafter created, which laws may, at any time, be altered or repealed; *and no such alteration or repeal shall interfere with, or divest rights which have become vested.*"

No State shall pass any "*expost facto* law, or law impairing the obligation of contract."

Art. 1. Sec. 10.

If the Legislature, under these constitutional provisions, attempts take from the creditor any rights or remedies which he had when his contract was made, *without supplying an equally adequate one*, the attempt to do so violates the obligation of the contract, and is repugnant to the foregoing provisions of the Constitution, and is void.

In McClain vs. Easley, 4 Baxter, 520, it is said as to the remedy, "That the Legislature may alter remedies, but they "must not, so far as regards antecedent contracts, be rendered "less effective or more dilatory than those ordained by the "law in being when the contract was made."

In Manbry vs. Baxter, 11 Heisk. 686, 687, the same Court recently said:

"Whatever belongs to the remedy may be altered, accord-"ing to the will of the State, *always provided* the alteration "does not impair the obligation of the contract; but if a stat-"ute so changes the nature and extent of an existing remedy "as to materially impair the rights and interests of the "owners of property. It is just so much a violation of con-"stitutional provisions as if it directly overturned his rights "and interests."

Dillon's Mun. Cor., Sec. 114, lays down the principle thus:

"As respects the *creditors* of a municipal corporation, their "rights are protected from the legislative invasion by the Con- "stitution of the United States; and no repeal of a charter of "a municipal corporation can so dissolve it as to impair the "obligation of the contract, or, it may probably be safely "added, preclude the creditor from recovering his debt."

By Act of 1875, the Legislature of Tennessee limited the power of taxation of the city of Memphis to an amount not sufficient to pay the interest on the bonds of the city, and the Supreme Court of Tennessee very promptly held that the Act was in contravention of the Constitution, as *impairing* the obligation of contract, and was void; and issued its peremptory mandamus, compelling the city to assess and levy the tax, as though the Act had never been passed.

Bethell vs. City of Memphis, MSS., not reported.

This Court has by a long line of decisions held the same doctrine, and it is unnecessary to make further citations, it is the settled law.

Now it is manifest that this repealing act is unconstitutional and void, unless like almost every individual or corporation that starts out to commit a palpable fraud and perpetrate a dishonest act, they have gone too far and made some mistake, have contrary to their intention left a remedy "as adequate as the one sought to be destroyed.

In Lurhman vs. the Taxing District, decision of Tennessee, 2nd Lea. It is proper to say the Court held that as an abstract question of law, the repealing act was constitutional, no creditors being before the Court, or complaining, and at the close of opinion the Court said: "The effect of what has "been done on the rights of creditor is not before us, and "no opinion is expressed. We merely hold that the previ- "ous charters of the city of Memphis have been validly "repealed, *and that the same people and the same territory have "been constitutionally re-incorporated* under a general law pro- "viding for the organization of municipal corporations.

It will be noticed that from this opinion two of the Justices dissented.

If no creditors are interested, we may concede that the repeal is constitutional, and that the Legislature has the right to repeal the public or political character of the corporation

But where the rights of creditors intervene, we know of no principle which would sustain the repeal as to them, if it in effect impairs the obligation of their contracts, as this act undoubtedly does. And as it appears to us the only ground upon which as to creditors the repeal can be sustained is upon the seventh proposition, in this Brief, to wit:

That an adequate remedy for the collection of their claims is left in the form therein claimed—or that the new government as the successor of the old, is liable for the debts of the old corporation, and the Police Commissioners of the new government, as the substitute of the general council of the old corporation *can*, by mandamus, be compelled to levy taxss for the payment of these debts, notwithstanding the act creating them forbids their exercise of the taxing power.

VI.

Are the 4th sections of the Act of Tennessee, approved January 31, 1879, ch. 10, Act 1879, repealing the charter of the city of Memphis, and the 14th section of the Act approved 31st January, 1879, being Chapter 11, of Act 1879, and the act approved March 13th, 1879, being chapter 92, and particularly sections 4, 5, 6, 7, 11, and 13, of said Act, valid and constitutional as against the creditors who are parties to this cause, and the Receiver of this Court.

Curran vs. Arkansas, 15 How., 307.

City of Dubuque vs. Ills. C. R. R. Co., 39 Iowa, 67–68.

Trustees of Aberdeen vs. Mayor, 13 Smedes & Marshall, 645,

Louisville vs. University, 15, B. Munroe, 675–676.

Cooley Conn. Lim., 289, 293, 241, 240, 238, 252, 251, 236.

Barings vs. Dabney, 19 Wall., 8 to 12.

Benson vs. Mayor, 10 Barb., 223.

Milner vs. Pensacola, 2 Wood, 639.

Bacon vs. Robertson, 18 How., 480.

1 Duval, 298.

Bechwith vs. Racine, 7 Bess., 142.

Broughton vs. Pensacola, 93 United States, 277.

Potter, Municipal Corp's, 698, 699, 714. Note.

Dillon, Municipal Corp's, 37, 39, 113, 114.

High on Receivers, 304, 305.

Angel & Ames on Corp's, sections 31, 33, 767.

New Orleans R. R. Co. vs. New Orleans, 26 La. Ann. 481.

Grogan vs. San Francisco, 18 Call., 613.

Trustees of Dartsmouth College vs. Woodward, 4 Wheat, 694.

Board of Commissioners vs. Detroit, 28 Mich., 240, 241.

Rattenhouse vs. Mayor, 25 Md., 346.

Murray vs. Charleston, 96 United States, 445.

Morgan vs. Beloit, 7 Wall., 619.

The above authorities establish the law, as follows:

1st. That the State has no power to take the assets and property of the dissolved corporation to itself, nor to give it to another corporation as against creditors.

2nd. That all property of a municipal corporation upon its dissolution, becomes assets for the benefit of creditors to be administered by a Chancery Court.

3rd. That when a municipal corporation has entered into contracts under power to levy taxes to pay the same when due, such power of taxation cannot be withdrawn until such contracts are satisfied.

4th. That a munipal corporation in its private character stands in the same relation to its creditors as a private corporation, and is subject to like laws applicable thereto.

In the case of the New Orleans R. R. Co., vs. city of New Oleans, it is said, "Municipal Corporations possess two "classes of powers and rights, public and private, in all that "relates to one class it is merely the agent of the State and "subject to its control; in the other it is the agent of the in- "dividuals of the place; the corporators maintain the char- "acter and relations of individuals, and is not subject to the tontrol of the Legislature its creator. Among this latter class "is the right to acquire, hold and dispose of property—sue "and be sued.

In Grogan vs. San Francisco 18 Cal. page 613, Justice Field delivering the opinlon of the Court says: "As far as "Municipal Corporations are invested with legislative or sub- ordinate powers for local purposes tney are mere instruments "of the State and under the control of the Legislature. But "these bodies may also be empowered to take and hold "private property for municipal purposes, and such property "is invested with the security of other private rights, and it "will hardly be contended that the Legislature may at will "take away its private propety or change the uses of its pri- "vate funds acquired under public faith.

Again, in Trustees of Dartmouth College vs. Woodward, 4 Wheat, 694, "It will hardly be contended that the Legisla- "ture can take away the private property of the coporation or "change the use of its private funds, nor can it *confiscate to its "own use the funds of a Municipal Corporation*

In the Board of Commissioners vs Detroit, 28 Mich., 236, it is said, "That whoever insists upon the rights of the State to interfere with and control by compulsory *legislation* the *action of local matter*, should be prepared to defend a like inter- ference in the action of private corporations and of natural persons," But as to objects and purposes peculiarly local, and in which the State at large, except in conferring power, has no concern, it is no more concerned than it is with the pri- vate eoncerns of its subject.

City of Dubuque vs. Ill. C. R. R. Co., 39 Iowa, pages 67 and 68, it is held, "The State by Legislation may decree the "death of Municipal Corporation and may become its execu-tioner

"but cannot seize or dispose of its property "at will."

Also in the case of Curran vs. Arkansas, 15 How., 305, it said, "A law which deprives creditors of a Corporation of "all legal remedies impairs the obligations of contracts, and "is invalid." Again page 531, "Whatever technical diffi- "culties exist in maintaining an action at law against a cor- "poration after its charter has been repealed, in the ap- "prehension of a Court of Equity there is no difficulty in a "creditor following the property of the corporation into the "hands of any not a *bona fide* creditor and asserting his lien "thereon.

Morgan vs. Beloit, 7 Wal., 619, "The authority to tax for "payment of municipal liabilites is in the nature of a trust, and the jurisdiction of a Court of Equity to interfere is too "clear to require citation.

Dillon Municipal Corp'ns, Sec. 37, "Where the legal ex- "istence of a Municipal Trustee is destroyed by legislative "act, a Court of Chancery will assume the execution of the "trust, take charge of the property, &c.

Beckwith vs Racine, 7 Biss. 142. This was a case in which the legislature repealed a Municipal Corporation. Court says: "Where a contract cannot be enforced at law against a Mu- "nicipal Corporation, owing to a repeal of its charter, and "there are any funds, a Court of Equity will administer them "for the benefit of creditors.

Broughton vs. Pensacola, 93 United States 277, "All the "properties of Municipal Corpoaations are assets to be ad- "istered by a Chancery Court for the benefit of creditors.

Again, in Beckwith vs. Racine, cited above, it is held: "That a contract entered into cannot be destroyed by obliter- "ation of the town, for the power to tax still exists," until the contracts are satisfied.

So in Von Hoffman vs. City of Quincy, 4 Wal. 535.

"Where a statute has authorized a Municipel Corporation to issue bonds and to exercise power of taxation to pay them,

the power of the taxation thus given is a contract within the meaning of the Constitution, and cannot be withdrawn until the bonds are satisfied."

Cooley on Con. Lim. 237 says: "If a State grants property to a municipal corporation, the grant is an executed contract which cannot be revoked. Rights accrued either by such grants, or by any other legitimate mode in which such corporations can acquire property, are vested rights and cannot be taken away."

So in the case of Davis vs. Brice, 82 Ill. 542 it is held, "That where a law under which municipal bonds are issued requires a tax to be levied to pay interest annually as it becomes due, such provision *is a standing levy by law so long as the bonds remain unpaid.*"

Town of Milwaukee vs. City Milwaukee, 12 Wis. 111, decides, "That a Municipal Corporation in the capacity of owner of property designated for its own use or benefit of its inhabitants; *holds vested rights therein, which are no more subject to legislative interference than those of private persons.*"

The Supreme Court of New York, says: "Justice Field in his opinion in the case of Grogan vs. San Francisco, 18 Call. 613, holds, "That the inhabitants of New York City have vested rights in the City Hall, Markets, Water Works, Ferries, &c., which cannot be taken from them any more than their private dwelling; a legislative grant is an executed contract, and as such is within the clause of the Co[illegible] prohibiting impairment of contracts." (This being so, can the legislature take this class of property from the old City of Memphis, and its creditors, and donate the same to the Taxing District which is claimed by Appellants not to be a substitute or successor of the old City but a separate and distinct corporation.)

We are told at common law that the King could not upon the dissolution of a corporation re-grant its lands to a new corporation; (see 1 W Blackstone, 592) because they reverted to the donors; now as held by this Court in Broughton vs. Pensacola, cited above, the common law has so

far been modified in that respect as to make all property upon a dissolution of a municipal corporation, liable as assets for benefit of creditors. So if the Taxing District is not the old City of Memphis disguised under a new name; it cannot hold this property for it belongs to creditors of the defunct corporation.

Now these principles of law being established by the authorities cited, let us apply them to the sections of the Acts of the legislalure mentioned above.

a. The 4th Section of the Act approved January 31, 1879. Acts of 1879, page 15, repeals all power of taxation heretofore vested in, and exercised by the municipal authorities of Memphis; and leaves no remedy whatever to the creditors to enforce the payment of their claims. Many authorlties have been cited to show that the legislature could not limit or restrict this power of taxation; in fact the case of Bethell vs. City of Memphis, decided by the Supreme Court of *Tennessee* involving these identical bonds and contracts, holds, "That the legislature could not limit this power of taxation to one dollar and sixty cents on the hundred dollars worth of taxable property, because the Statute under which the bonds were issued, gave the power of taxation for their payment without limit.

If power of taxation cannot be restricted by the legislature does it need autority to show that it cannot be taken away in toto.

Again, on the same page of said Act: "All the public "buildings, squares, promenades, wharves, parks, fire-"engines, hose and carriages, horses and wagons, engine "houses, engineer instruments, and all other property, real "and personal, hitherto used by said municipal corporation, "is transferred to the custody and control of the State, to re-"main public property."

If it be true that the Legislature has no control over the private or proprietary character of a municipal corporation, and no right to interfere with the property held by it in its proprietary character for the use and convenience of its in-

habitants, then it must follow that this part of the Act is void, for want of power in the Legislature over the subject matter. besides, this property, as stated by the authorities, is *vested* in the old corporation, and upon its death become assets for its creditors.

b. The above remarks are equally applicable to Section 14 of an Act approved January 31st, 1879.

Act 1879, pp. 25–26.

This Act was passed on the same day as the above, but subsequently thereto, as it recites the previous passage of the former.

On pages 25–26 it provides that "the fire-engines, hose and "carriages, horses and wagons, engine houses, public build-"ings, squares, parks, engineer instruments, etc., and all "other property used by the corporation for purposes of gov-"ernment, are hereby transferred to the custody and control "of the said Board of Commissioners, to remain public prop-"erty, etc.; and that all indebtedness for taxes, or otherwise "due to said municipal corporation shall be vested in and be-"come the property of the State, to be disposed of for the "settlement of debts of said extinct municipal corporation; "*provided,* however, that the taxes heretofore assessed as "privileged taxes, and set apart for payment of firemen and "policemen shall be paid to the firemen and policemen of the "Taxing District."

It will be seen that the taxes and debts due the city of Memphis were not disposed of by the former of these Acts, to-wit, the one known as the repealing Act, but was left without owner or controler until the passage of the Taxing District Act, by which they were passed to the State to be administered for creditors. Now, if taxes past due, and debts of a municipal corporation, upon its dissolution, become assets for creditors, (about which we do not think there can be much doubt,) then immediately upon the repeal of the charter they became assets, to be administered by a Chancery Court; and any Statute conveying them over to the State, or taking them from the creditors whose rights had attached prior to the passage of the subsequent Act, was null and

void. Even if the original Act had conveyed these taxes and debts to the State for the purpose of administration, such would have been void; and the creditors had the right to have the assets administered by the Court under officers of its own appointment, and the State had no authority to act in the matter. As to the property conveyed by this Act to the Taxing District by the State, we submit that the State, having no title thereto, could convey none.

For the above reasons, the Section 4 of the Repealing Act and 14th of the Taxing District Act are clearly void; and these reasons are equally applicable to Sections 4, 5, 6, 7, 11 and 13 of what is known as the Receiver Act, under which Appellant Meriwether claims to hold. These sections of said Act restrict the mode of collecting taxes to one manner, as therein provided, instead of the different modes heretofore allowed; require the Collector to receive payment in a depreciated scrip instead of money, which, when received, would prove of no value in payment of creditors' claims. Section 6 allows the already past due taxes to be paid in five annual installments, thus delaying creditors in their collections; while another portion of the Act, to-wit, Section 13, gives the debtor, after his land has been sold, five years to redeem it. If the questions of law heretofore discussed be as we have shown, we need no further argument to show that these Sections of the Receiver's Act are void as against creditors.

But again, we say that these sections of this act are void for the additional reason, to-wit: At the date of their passage, namely: March 14, 1879, the Circuit Court of the United States under the bill filed by the creditors in the cause, had taken jurisdiction of the parties and subject matter, taken within its control all of the property of the dissolved corporation, appointed its Reveivers with power to collect all of the assets, who had qualified, entered upon his duties, and had in fact collected a considerable amount of said due claims.

Now will it be contended that after a Court of competent jurisdiction has taken within its control the administration of a fund and to a great extent administered the same; that the legislature of a State can rob this tribunal of its jurisdiction, undo all that it has done, take from its possession and control

the property and assets, turn them over to an officer of its own creation, to be administered in a manner that is injurious to creditor, by reason of delay in the manner of the administration provided, as well destructive to the value of the assets by reason of receiving depreciated scrip received in payment. Can such questions admit of serious argument? We think not.

The creditors were entitled to have their debts paid in money and the taxes levied therefor, collected in money at once. *Receivers act changes* all these features of the contract, and does not supply an adequate one in its place; in fact supplies no remedy, beneficial to the creditors; this alone renders the act void.

4 Baxter, 520.

11 Heisk, 686.

Again: The appointment of a *Receiver* is a *judicial*, not a legislative function.

VII.

After the taxes already levied and uncollected due said corporation, and the other property named in these bills, shall have been ascertained to be insufficient to pay the creditors of said city, has this Court power to bring in all or any part of the inhabitants and corporators, within the limit of said dissolved corporation by process and make assessment against them or their property, to pay balance of debt found due, from said corporation, pro rata, and render decrees for such amount against each of them, and enforce the same?

We maintain that it has.

Perhaps this is the first instance in the history of this country, where a municipal corporation of 50,000 inhabitants, has procured the entire abolition of its entire charter and fran-

chises for the express purpose of defrauding its creditors of their entire debts; hence it is, that it is difficult to find a precedent in the former adjudications on the subject, and many of the questions must be solved upon principles of reason, common sense, common honesty and from the analogies of the law.

Now, in order to arrive at a just conclusion on this proposition, it is necessary to keep prominently in view *what the rights of the creditors were before the repeal*, as well as to enquire what their *present* rights are.

1st. *Before* the repeal they had the right to look to the entire taxable property, real and personal in the corporate limits of the city, as well as to the corporators or inhabitants; it is true that whilst it possessed its charters and was a live municipality, this property of the inhabitants could only be subjected by invocation of the taxing power, but at the *same time the creditor* then had the power through the courts to compel the city to exercise that power to an extent *sufficient to pay the entire debt, and there is no limit to the power of taxation*, except the extent of the debt or demands; and an eminent Jurist of this country has expressed the extent of that power in the following terse language, "The power of taxation carries with it the power to destroy."

Then it is clear that before the repeal, *all taxable* property in the corporate limits was liable and bound for the payment of debts. This was part of the *obligation* of the contract. To this *they* were entitled and cannot be deprived, unless an equally adequate remedy be supplied or left to them.

We have, in this Argument and Brief, already referred to the proposition that a municipal corporation has *two distinct characters—one public, the other private.*

That over the public side, the Legislature is supreme; it can change, alter, amend—and abolish—that over the private side it is not supreme.

But as to both characters, it seems to be always provided that *no such alteration or repeal, can interfere with vested rights, impair the obligations of contracts, or take away from the creditor,*

rights which existed when the contract was made—a remedy adequate must be left.

While a *Municipal* government stands in tact, *or* while the political part remains in all its integrity, the whole corporation is entitled to many immunities under our system of Government—to wit: The property used for public purposes cannot be seized by creditors; the individual property of the corporator cannot be seized for *corporate* debt, by *direct* proceeding, *all these benefits and immunities result to the private side of the corporations, and to the corporators*, by reason of its *connection* with the *public* or *political character*, which after the destruction of the political part or character, these benefits and immunities no longer exist.

Now let us for the purposes of this proposition, admit that the act of January 31, 1869, absolutely abolished and repealed the charter of Memphis, in so far as it was competent to do so—yet we insist that the *only result was to repeal* and abolish the public or political part or character of the same, *in other words, the effect was to destroy the political halt of the corporation, and that too, the half which gave protection to the other or private half* and its individual inhabitants or *corporators*, and the result was that the body corporate was left as a *dissolved private corporation*, and its corporators (who stand in lieu of stockholders) subject under the law to all the rules, pains and penalties of a dissolved private corporation in Tennessee—leaving a Court of Equity to administer the whole concerns of the same, according to rules of Equity, and the *very right* of the whole case.

Because under the authorities the abolition of the Charter cannot effect the rights of creditors, nor impair the obligations of contract.

Dillon, Secs 41–114.

Cooley on Lim., pp. 251, 392.

And if the above proposition be sound, no great injustice is done, and there is still perhaps an adequate remedy left for the creditors.

And it is right to presume that the Legislature intended to

leave such a remedy, and meant the Act in good faith—though we admit the presumption is violent.

In Milner's Admrs. vs. Pensacola, 2 Wood 639, it is said, "That legislation which has the effect of abolishing a munici-"pal corporation and creating another out of the same inhabit-"ants and over the same territory, and exempting it from "liabilities of its predecessors, would be an unconscionable "and barefaced fraud. And such a construction of such an "intention should be avoided."

In Beckwith vs. Racine, 7 Bissel, 142, it is said: "A con-"tract entered into previously cannot be destroyed by oblit-"eration of the town, for the power to tax still exists."

Now, keeping these principles in view, what was the result, aad what was the remedy left? And we answer:

1st. All the property and assets of the corporation belonging to it in its corporate capacity, and, after its exhaustion, the property of the individusl corporators, as well as the corporators, are liable to be compellled to contribute pro rata to pay the amount found by account to be still due, after application of the strictly corporate funds; and a court of equity has the power to enforce it, *not as a tax, but as an assessment*, just as in the case of a private corporation, and under the law as set forth in the Code of Tennessee, Sections 3768, 4294, 4295, 4~~296~~ 3000,

Marr vs. Bank West Tenn., 4 Cold. 471–479, and authorities cited.

Story's Eq. Juris., Sec. 1252, and authorities cited, under which a remedy is left, giving the Court of Equity in a case of a disolved or insolvent corporation full power to administer the corporate property, and to entertain a bill against the corporators, and render decrees for the pro rata amount due from each; and this proceeding is *in no sense a tax*, it is simply decreeing that the members of the dissolved corporation shall pay their ratable proportion of a debt due from them all alike.

The levy of a tax presupposes, a political power, but we

have seen that is withdrawn, and no longer exists in this case.

But the private part remains for the enforcement of all contracts.

Nor in this view can the corporator justly complain, because it compels him to pay just what he was bound for, and just in the proportion he was bound under the tax system, no more, no less, to wit, his proportion to the payment of the debt.

And a Court of Equity can carry out all this matter of account and apportionment, exactly doing justice to both the creditor and the corporator.

For after all the particular power to levy a tax for the payment of these debts is a Trust, and it has been said cannot be withdrawn until the debt is paid.

Sec. 10, Peters * 532–564.

Story's Eq., Sec. 1060–1062.

Railroad Co. vs. Howard, 7 Wal. 311.

29 Vermont 12.

Dillon Cor., Sec. 37–729–47.

Vanhofman vs. Quincy, 4 Wal. 613–616–617.

Beckwith vs. Racine, 7 Bissell 152.

Doctor Salmon vs. Hamborough, Co., 1 case in Ch. * 204.

Morgan vs Elliott 7 Wal

"*Contribution and apportionment are recognized heads of* equity jurisdiction, and if it be assumed, that process could issue directly against the citizens, to collect the debt of the City a Court of Equity could make the apportionment more conveniently than could a court of law."

Reese vs. Watertown, 19 Wal. p. 124.

Story Eq., Juris., Sec. 470.

It is urged that the principles decided by this Court in the cases of Reese vs. Watertown 19, Wal. 197.

Heine vs. Levee Commissioners 19, Wal. 655.

Barclay vs. Levee Commissioners, 93 United States 258.

Are in conflict with the proposition here insisted upon; we do not so understand the points of these decisions.

1st. In Reese vs. Watertown, there was a bill in equity, asking the Court to subject the individual property of the citizens to the payment of the debt claimed; or to appoint the Marshal to levy and collect the tax sufficient for the purpose; this Court declined to do either. *But in that case the charter of Watertown was in full force.*

It possessed both the political *as* well as private character. The political char[illegible] protected the citizens and corporation from a direct proceeding to subject his property; the taxing power remained in the corporation, and while it remained could only be exercised by it; the remedy by the creditor, while the municipal corporation remained in full force, and this would not be exercised by the Court; *but that case is not the one at bar, in that case there had been no dissolution of the corporation or repeal of its charter.*

2nd. In Heine vs. the Levee Commissioner, *there had been no judgment at law against the corporation.*

The corporation had not been dissolved by legislative act or otherwise.

The Levee Commissioners had *resigned*, and the relief was refused in equity, because the remedy at law had not been exhausted, &c., &c.

A careful examination of this case, we think, will sustain us in the assertion, that it is very dissimilar to the one now before the Court.

In Barclay vs. Levee Commissioners.

The corporation was not a municipal one; the Board of levee commissioners had been "functus officio" for fifteen years.

This was a suit at law, not in equity, and so far as we can see the question was, whether upon the state of facts a *mandamus* could issue to compel the surviving commissioners of the old Levee Board or the Police Juries of the parishes of Madison and Carroll, to assess a tax upon the property in

the old district to pay the judgment in question, or whether the Circuit Court of the United States could direct its Marshal to assess such tax. And the Court declined to do either one. This is all we see decided in the case, and it is certainly not a controlling decision in the case now before the Court.

It is true there are general expressions of the Court used by way of argument and illustration in the above cases, which do not bind the Court in future cases as *decision*, and was never intended to do so.

See Cohen vs. Virginia, 6 Wheaton, 399.

We do not ask any of the things to be done that were urged in the foregoing cases, and an entirely different state of facts exist. Of course a tax presupposes a political power a legislative function; but the political character no longer existing, what we ask is not even in the nature of a tax.

A.

We think the above proposition sound, unless this Court shall hold that the Commissioners of the Taxing District, notwithstanding the restrictions in the statute, are compellable by mandamus, to levy a tax for the payment of the debs.

But in view of the decisions in Barclay vs. Levee Commissioners, and the Statutes creating the Taxing District, which in express terms declares that the Commissioners shall not have power to levy a tax, nor be liable for the debts of the old government,—"*Is there not embarrassment and difficulty enough in the way of enforcing the legal remedy, especially when produced by the action of defendants*" to authorize a Court of Equity in rendering complete relief.

Bacon vs Robertson 18 How 480-486

See Bedford vs. Brady, 10 Yerg. 350.

VIII.

Are the taxes collectable in money?

All the Acts of the Legislature contemplate that taxes shall be collected in money, or at least did so at the time the contracts of the creditors were entered into.

The statute declared: "Said taxes shall be *collected in money*,

"and if not paid, a penalty of five per cent to attach, and the "property on which levied subject to same powers, penalties "and provisions now and hereafter existing for State and "County tax."

Private Acts 1867–8, Ch. 102, Sec. 5, p. 248.

It is said that by Act of March 23, 1875, p. 160, Sec. 66, it was provided that all taxes levied prior to 1875 could be paid in valid indebtedness of the city of Memphis, and therefore at least that amount is payable in *scrip;* but our answer to this is, that this, if constitutional, was a gratuity, and could be withdrawn. And by Act of 1879, Ch. 10, Sec. 4, p 14, this Act was expressly repealed, and hence left the law, as before, for all taxes to be collected in money.

IX.

Did the judgment creditors who levied executions on the private property of the old corporation, to-wit, the city hall, market-houses, fire-engines, horses, wagons, etc., and who levied by garnishment on the funds in the banks, after the passage of the repealing Act, and prior to the Receiver Act of date March 13, 1879, acquire any lien or priority by said levies?

This class of property and funds as shown by a statute in Tennessee is exempt from levy and execution when *owned by a Municipal Corporation and used for corporate purposes.* Then do they not cease to be exempt from such levy so soon as they cease to be owned and used by Municipal Corporations or held for Municipal purposes? Public policy dictated the establishment of this law, but when the corporation has been abolished it ceases to need the property for corporate purposes, and the *maxim que cessat ratione lex, cessat lex* applies.

Then we submit that these levies fixed a lien in favor of the plaintiffs in those executions from the date of the levy; unless it may be that the Taxing District is a successor of the old City, and liable for its contracts, the clause of the recent Act of the Legislature exempting the new creature, to the contrary notwithstanding.

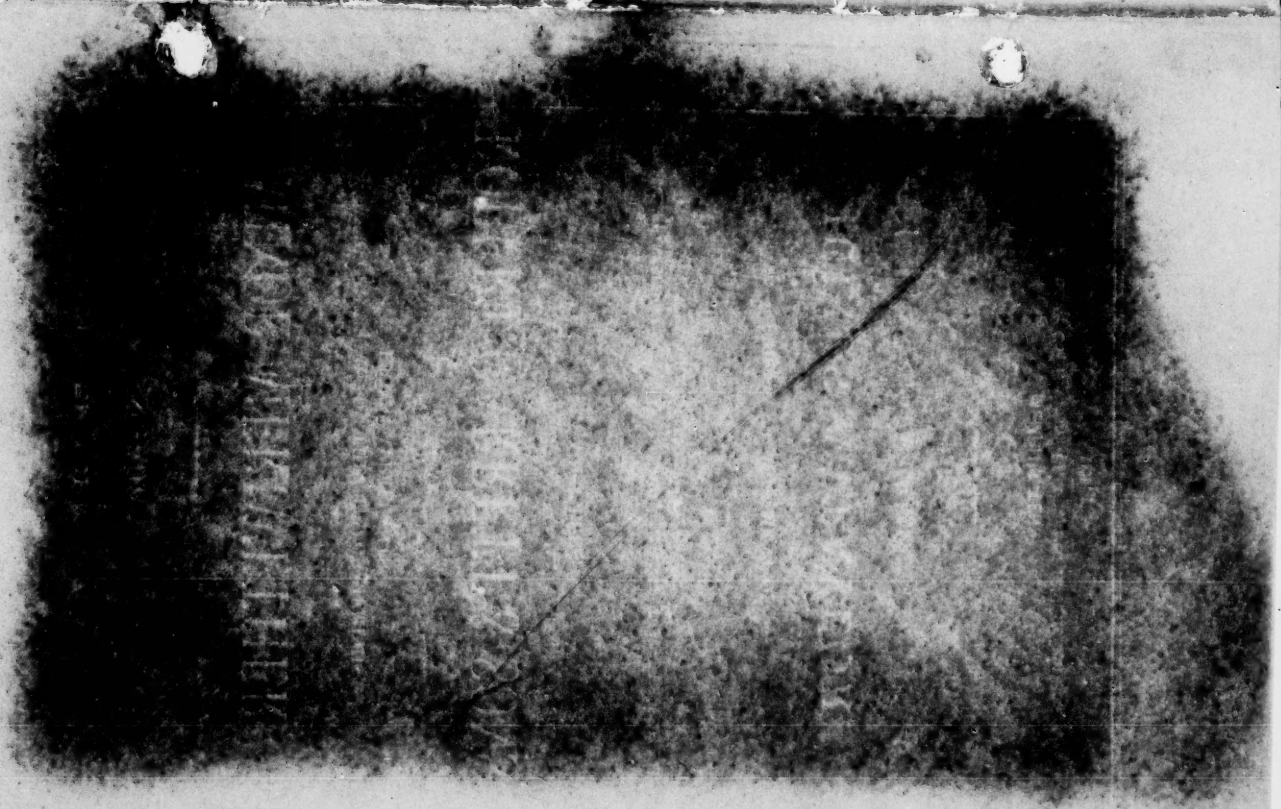
It is said that in Gerard vs. Philadelphia, 7 Wall., page 1, "That the identity of a Municipal Corporation is not changed nor its rights to hold property destroyed by a change of "name and an enlargement of area or increase of the number "of inhabitants.

Again, in Bechwith vs. Racine, 7 Biss., 142, "Where a Mu-"nicipal Corporation is legislated out of existence and a new "one formed out of its territory, the new one must pay "the debts of the old, and an act of the Legislature attempt-"ing to put an end to the indebtedness is unconstitutional.

So in Broughton vs. Pensacola, 93 United States, it was held that the abolition of the town and creation of another town over the same territory, including the same inhabitants was but the creation of a substitute for the old corporation, which was liable for its obligations. In the case at bar not only is the Taxing District composed of the same inhabitants and over the same territory, but all of the corporate property of the old city has been given it, besides a part of the taxes, namely, the police and fire tax levied for 1878. See Act 1879, page 26, Sec. 14.

So we submit that as to these levies, there are two horns of the dilemma, either of which the appellants may take refuge if they desire—to wit: Either all of this property levied on is subject to debt of creditors, and the liens are fixed by said levies, or, the Taxing District is a successor and liable for all of the debts of the old City.

MYERS & SNEED,
Attorneys for Appellees.



SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1879.

No. 916.

MINOR MERIWETHER,

RECEIVER, &c., OF THE CITY OF MEMPHIS,
ET AL., APPELLANTS,

VERSUS

ROBERT GARRETT & SONS,

ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

BRIEF AND ARGUMENT OF

JULIUS A. TAYLOR,

FOR APPELLEES.

MEMPHIS, TENN.
Price, Jones & Co., Printers, Binders, &c., 12 Jefferson Street.
1879.

MINOR MERIWETHER,

RECEIVER, &C, OF THE CITY OF MEMPHIS, ET AL., APPELLANTS,

VS.

ROBERT GARRETT & SONS,

ET AL, APPELLEES.

CONSOLIDATED CAUSES IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1879.

Appeal from the Circuit Court of the United States for the Western District of Tennessee.

BRIEF AND ARGUMENT.

These are five causes, instituted on the equity side of the Circuit Court of the United States for the Western District of Tennessee.

The first is by Robert Garrett & Sons, et als., as the holders of certain judgments, recovered by them respectively, against the city of Memphis, ~~and~~ upon certain coupons and bonds issued by said city, under Acts of the Legislature of the State of Tennessee.

The second is by Hopkins Loudon against the city of Memphis, to recover certain alleged sums due him for laying down a pavement in the said city, under a contract authorized by law.

The third is by *The Ahrens Manufacturing Company*, based upon a judgment recovered against the said city, in the year 1878, for a fire engine sold and delivered to it, under contract, which the city was empowered by law to make.

The fourth is by *Talmage E. Brown*, based upon a judgment recovered by him, in the Circuit Court of the United States,

for a balance due him, on account of a paving contract, made by him with said city, and which it had authority to make.

The fifth is by *Furman Rogers, et al.*, and is based upon certain judgments recovered against the city of Memphis upon coupons and bonds, and also upon other evidences of debt of said city, authorized by law to be contracted.

The object of these several bills is, among other things, to reach and subject to the satisfaction of complainants' debts, all the assets of the city of Memphis, of every kind and description; to have a receiver appointed to collect and administer the same, and to have certain legislation of the State of Tennessee declared unconstitutional and void.

The town of Memphis was first incorporated by an Act of the Legislature of the State of Tennessee, passed December 9, 1826. Act of 1826, chap. 145.

By an Act passed December 1, 1829, additional powers were given to the said town.

On the 19th October, 1832, by Act, the charter of Memphis was again amended, and its powers again increased.

On February 3, 1843, by Act, the charter of said town was again amended. Acts of 1843, chap. 26.

By an Act of the Legislature of January 6, 1845, the town of South Memphis was first incorporated. Acts of 1845, chap. 56.

The charter of Memphis was further amended by an Act of the Legislature of the State of Tennessee, passed January 24, 1846.

By an Act passed January 21, 1848, the powers of the Mayor and Aldermen of said city were again extended.

Act of 1848, chap. 74.

On February 4, 1848, by Act, the charter of South Memphis was amended.

By an Act, passed December 3, 1849, the several Acts incorporating the city of Memphis and the town of South Memphis, were incorporated into one Act, and the said cities were consolidated, and the boundaries thereof extended, the corporate name

being, "The Mayor and Aldermen of the city of Memphis." Its powers were enlarged, and by the tenth section of said Act, said corporation was empowered to issue time bonds for railroad and other purposes; not having more than thirty years to run. Acts of 1848–9, chap. ——

On the 28th January, 1852, the Legislature passed an Act amending the charter of said city, and giving additional taxing powers to it.

By an Act entitled "An Act to establish common schools, and for other purposes," the charter of said city was further amended, and power was given it to levy additional tax to raise money to purchase ground, erect buildings and establish a system of free education in said city.

By Act passed December 5, 1853, the subscription of one hundred and fifty thousand dollars, voted by said city, to aid in the construction of the Mississippi and Tennessee Railroad, was declared valid, and the city authorities were empowered to issue bonds of the said city and subscribe the same as stock in said road, upon such terms and conditions as they might deem best. Acts of 1853–4, chap. 7, section 3, page 35.

And all of the time bonds theretofore issued by the Mayor and Aldermen of said city, for the purpose of borrowing money, were declared legal and binding, the provisions of any law or ordinance, to the contrary notwithstanding.

Acts of 1853–4, chap. 195, Miscellaneous Provisions, section 8, page 301.

By section 2, of article 4, of this Act, said city was authorized to issue bonds, having not less than thirty years to run, and bearing an interest of not more than six per centum per annum, for the purpose of funding any and all of the then due debt of the city, or that not then due, but for which city bonds might have been issued. Also to issue bonds of the city to the Memphis and Little Rock Railroad, or to any railroad company in which said city had taken stock; and, by section 3, of the same Act, the city was authorized, upon the same terms as to time and rate of interest, to issue its bonds for the

purpose of aiding in the construction of this, or any other railroads, leading into or near Memphis.

By section 1 of said Act, the Board of Mayor and Aldermen was granted power to lay and collect a special tax for the sole and special purpose of paying interest, as the same might become due, upon bonds authorized to be issued by the second section; but said tax was not to be greater than was necessary for the purpose. This section required that a separate account thereof should be kept, and that the money received under that tax should not be applied to any other purpose whatever, and it was made the duty of each and every Board of Mayor and Aldermen, immediately after organization, to adopt an ordinance imposing such special tax, and until such ordinance should be passed and approved, no other ordinance or legislative act which they might transact, was to be lawful or binding, or have any legal force or effect whatsoever.

On February 19, 1856, by the tenth section of an Act, entitled "An Act to amend the charter of the United Firemen's Insurance Company of Nashville, and for other purposes," the Board of Mayor and Aldermen of the city of Memphis, was required to set apart, semi-annually, in the months of January and July of each year, a sum not less than five thousand dollars, to be called the Memphis sinking fund, and which was to be exclusively applied to the purpose of retiring any of the bonds of the city.

Acts of 1855–56, chapter 264, section 10.

The twenty-second section of this Act provides for the issuance of school bonds, having not more than thirty years to run.

On the 29th of February, 1856, the charter of the city was further amended, and on February 20, 1860, it was still further amended.

By the third section of that Act, power was given to the city to issue time bonds, to have not more than thirty years to run, for the following purposes:

First—To an amount not exceeding five hundred thousand

dollars, for the purpose of erecting permanent waterworks in the said city.

Second—To an amount not exceeding five hundred thousand dollars, for the construction of pavements and walks on the principal streets.

Third—To an amount not exceeding four hundred thousand dollars, to aid in the construction of a railroad connection between Memphis and St. Louis, Missouri.

Fourth—To an amount not exceeding two hundred and fifty thousand dollars, to aid in the completion of the Mississippi and Tennessee Railroad.

Fifth—To an amount not exceeding two hundred and fifty thousand dollars, to aid in the construction of the Memphis and Ohio Railroad, and to a sum not exceeding the same amount for the Memphis and Little Rock Railroad ; and,

Sixth—To an amount not exceeding two hundred and fifty thousand dollars, for the purpose of funding all or any of the then due debt of the city, or that not then due, but for which bonds might have theretofore been issued.

Acts of 1859–60, chapter 70, section 3, page 280.

On February 29, 1860, the charter was again amended, and the city authorized to subscribe for stock in the Memphis and Charleston Railroad.

On March 24, 1860, it was again amended.

On November 24, 1866, the charter of said city was again amended; it was given power to make any public improvements that might be deemed necessary, or of acquiring any property for public use of the city, and to issue bonds, having not more than thirty years to run.

Acts of 1866–7, chap. 8, sec. 3, sub-sec. 2, p. 16.

By the 14th section of this Act, the Board of Mayor and Aldermen was granted power, by ordinance, to subscribe on behalf of the city, any amount of stock it might think proper, in any railroad within or without the State of Tennessee, which, in its opinion, would contribute to the material wealth of the

city, and might issue bonds to pay for such subscriptions, having such length of time to run, and upon such terms and conditions, as said board might deem proper.

On December 3, 1867, the charter was again amended, and the Board of Mayor and Aldermen, for the purpose of funding the debt of the city, was given power to issue its bonds, bearing interest at the rate of six per centum per annum, and having not more than thirty years to run.

Private Acts of 1867–8, chap. 36, sec. 4, p. 66.

By Act passed March 4, 1868, it was provided that the Board of Mayor and Aldermen should, at the beginning of each corporate year, levy a special tax to pay the interest on the bonds of the city, of whatever description, which tax was to be collected in money, and held for the sole purpose of paying said interest. And the said interest was to be paid in equal parts semi-annually, payable on the 25th days of May and November, and certain penalties were denounced for non-payment of the interest tax promptly.

Private Acts of 1867–8, chap. 102, sec. 5, p. 248.

On the 1st December, 1869, an Act was passed to reduce the charter of the city of Memphis, and the several Acts amendatory thereof into one Act, and to revise the same.

Acts of 1869–70, chapter 26, page 225.

By section 52, the General Council was empowered, in addition to certain other taxes, to lay and collect a special tax for the sole and special purpose of paying interest, as the same might become due on the bonds issued, or to be issued by the city. A separate account thereof was required to be kept, and the money received under said tax was not to be applied to any other purpose whatever, than that of paying said interest.

By section 54, the General Council was granted power to lay and collect a special tax, not to exceed one-half per centum, or fifty cents on every one hundred dollars of taxable property, for the sole purpose of creating a sinking fund, to be used in retiring bonds of the city, as the same might become due.

By section 61, its General Council was authorized to subscribe, on behalf of the city, any amount of stock they might think proper, to any railroad within the State of Tennessee, which, in its opinion, would contribute to the material wealth of the city; and the Council was empowered to issue bonds to pay for said subscription, having such length of time to run, and upon such terms and conditions as it might deem proper. By this same section, authority was also conferred upon the General Council—for the purpose of making any public improvement that it might deem necessary for the city, or acquiring any property for the public use of the city, or to fund the debts then due or to become due from the city—to issue bonds bearing interest, not to exceed six per centum per annum, and having not more than thirty years to run.

By an Act passed March 2, 1870, Acts 1869–70, chapter 117, section 4, page 632, it was provided that in all cases where the city of Memphis had issued any warrants, scrip, coupons or other security, under a provision of law authorizing the levy of special taxes, for the payment thereof, such warrants, scrip, coupons or other security should not be paid out of the general or ordinary revenue of the city, but such special tax should be levied and collected for the same, in the manner provided for under the Act authorizing the levy of such special tax.

By the Acts of 1871–2, chapter 147, page 167, Cities having a population of twenty thousand and upwards, were authorized in their corporate capacity to issue bonds, signed by the Mayor and countersigned by the Recorder of the city, with coupons for interest attached, to an amount not exceeding three hundred thousand dollars, running from one to thirty years, and bearing interest at the rate of six per centum per annum, payable semi-annually. These bonds were to be used alone for the purpose of paying outstanding liabilities of the city or corporation issuing them, and were not in any case to exceed the legal and binding liabilities of such city or corporation at the time of the issuance thereof. The city of Memphis, at the

time of the passage of this Act, had a population exceeding twenty thousand.

By an Act of the Legislature, approved March 23, 1875, Acts of 1875, chapter 92, section 64, page 159, it was provided that it should be the duty of the General Council, immediately after the assessment of the property of the city, for taxation, to make out what is known in legislative parlance as a "Budget," and apportion the one dollar and sixty cents (authorized by previous sections to be levied), to defray the various items of expenses incident to carrying on the city government; *Provided*, that not more than one dollar on the $100, or one per cent. should be applied to defraying general expenses, such as police and fire department, officers' salaries, water and lights, improving and repairing streets, etc., and not more than sixty cents on the $100 should be appropriated to special purposes. Of this amount twenty cents on the $100 should be appropriated to the payment of interest on the bonded debt; twenty-five cents on the $100 should be appropriated to provide a sinking fund to retire the bonded indebtedness; ten cents on the $100 should be appropriated to the maintainance of the city schools, and five cents on the $100 should be appropriated to the payment of judgments.

By the 70th section of said Act, it was provided that all taxes assessed upon real estate within the city should be a lien upon such real estate.

By chapter 91, Acts of 1875, page 129, the Trustee of the county was required to collect all taxes due the various municipalities within his county.

By chapter 71, Acts of 1877, page 88, the power to levy taxes of every description, and for every purpose whatever, was taken away from the municipal corporations designated in said Act, of which Memphis was one, and each and every officer and representative thereof; and said taxing power was lodged in the Legislature of the State, and not elsewhere, and the Chancery Court was authorized to appoint a receiver upon the application of any person or persons who were the owners and

holders of any past due and unpaid bonds, coupons, or other indebtedness of said municipal corporations, not less in amount than one hundred thousand dollars.

By section 8 of this Act, it is provided that it shall take effect when the tax mandamuses outstanding against any of said municipal corporations shall amount in the aggregate to the sum of eight hundred and fifty thousand dollars.

All of the demands of complainants were created under some one of the statutes hereinbefore mentioned. Their legality and obligation upon the city is not questioned in these proceedings; but it is sought to escape payment of them under certain legislation now to be referred to.

By an Act approved 31st of January, 1879, entitled "An Act to repeal the charters of certain municipal corporations, and remand the territory and inhabitants thereof to the government of the State," chapter 10, page 13, Acts of 1879, it was attempted by section 1 to repeal the various Acts incorporating the city of Memphis, and all amendments thereof, and which have hereinbefore been referred to, and to abolish all offices created or held under or by virtue of any of said Acts.

By section 2 it was enacted that the charters and amendments thereof of all municipal corporations within the State having a population of thirty-five thousand inhabitants or over, by the Federal census of 1870, should be repealed, and all municipal offices held under them abolished; and by section 3 it was enacted that the charters and amendments thereof of all municipal corporations within the State having thirty-five thousand inhabitants or over, at the date of the passage of the Act, should be repealed, and all municipal offices held thereunder abolished, and it was made the duty of the Governor to ascertain and declare by proclamation to what corporations this section applied; said proclamation to be conclusive evidence of its truth, and to be made within ten days from the passage of the Act.

By section 4 of the Act, all powers of taxation in any form whatever, theretofore vested in or exercised by the authorities of said municipal corporations, by virtue of any Act of incorpo-

ration, is forever withdrawn, and reserved to the Legislature; and the public buildings, schools, promenades, walks, streets, alleys, bridges, fire engines, hose and carriages, horses and wagons, engine houses, engineer instruments, and all other property, real and personal, theretofore used by such corporations for municipal purposes, were transferred to the custody and control of the State, to remain public property for the uses to which said property had been theretofore applied; and all persons holding office under and by virtue of said repealed sections, or any of the Acts before recited, were prohibited exercising, or attempting to exercise, any of the powers or functions of said office.

Section 5 provided that the Act take effect from and after its passage.

Immediately upon the approval of this Act, the Governor of the State issued his proclamation, declaring that he had ascertained that section 3 thereof applied alone to the city of Memphis.

On January 29, 1879, the Legislature passed an Act, entitled "*A Bill* to establish taxing districts in this State, and provide the means of local government for the same." This was approved January 31, 1879.

Acts of 1879, chapter 11.

By the 1st section of this Act, it is provided that the several communities embraced in the territorial limits of all such municipal corporations in this State as have had or may have their charters abolished, or as may surrender the same under the provisions of this Act, are thereby created taxing districts; and, in order to provide the means of local government, for the peace, safety and general welfare of such districts, the Act then proceeds to provide a system of local government.

By section 9, an annual tax is levied upon all the taxable property embraced in the district, as follows:

18 cents on the $100 to defray the expense of the Police Department.

15 cents on the $100 to defray the expense of the Fire Department.

10 cents on the $100 to defray the expense for lighting the streets and public buildings.

10 cents on the $100 for the maintenance of public schools.

50 cents on the $100 for repairing and paving streets and bridges, and constructing sewers and drains, and for sanitary purposes.

And a privilege tax, equal to one-half the tax imposed, for State purposes.

By an Act approved March 14, 1879, chapter 92, the Governor of the State was authorized to appoint an officer for the extinct municipal corporations, respectively, to be known as Receiver and Back-Tax Collector.

Section 2 defines the duties of this officer.

Section 4 empowers and authorizes him to file a general creditors' bill, in the name of the State, against delinquent tax-payers; in which bill the Court is to declare all equities, priorities and liens.

Section 6 prohibits the Receiver and Back-Tax Collector from coercing from delinquent tax-payers payment of a greater sum than one-fifth part annually, so as to distribute the whole of their delinquency through five equal annual installments.

Section 11 preserves the right of redemption to delinquent tax-payers.

Section 12 makes it the duty of the Attorney-General of the district wherein is situated the Taxing District, and he is thereby required immediately to suggest of record, in all the Courts of this State and the United States, where suits are pending against said municipalities, the repeal of the charters of the same.

Section 13 suspends proceedings in all suits pending for the collection of taxes due extinct municipalities until the filing of the general creditors' bill and the consolidation provided for in the Act.

Upon the argument of the several demurrers in the Court below, the opinions of the Judges were opposed upon the several questions recited in the record, and they have been certified to this Court for determination.

Printed Record, page 107. Original Record, 441.

ARGUMENT.

I.

THE JURISDICTION OF THE COURT.

We do not consider it necessary to discuss the question presented in the first proposition, for the reason that, should this Court consider it had no jurisdiction, under the Act of 1877, or by the inherent powers of a Court of Chancery, to seize and impound the assets, revenues, and properties of a municipal corporation, yet the amended bill of complainants, Garrett & Sons, and three of the other bills of complainants in these consolidated causes, were filed subsequent to the Act of January 29, 1879, and the cases are to be considered in the light of that statute.

Leaving out of view the Act of 1877, the power of a Court of Chancery is clear, to appoint a receiver of a corporation, whose officers have abandoned their trust, and where it is likely that the assets of the corporation will be wasted.

Lawrence v. Greenwich Fire Ins. Co., 1 Paige, 587.

II.

THE VALIDITY OF THE ACTS OF 1879.

Upon the second proposition, complainants insist that the Act entitled "An Act to repeal the charters of certain municipal corporations, and to remand the territory and inhabitants thereof to the government of the State," approved January 31, 1879, is unconstitutional and void.

1. Because in conflict with section 10, article 2, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

2. And because in conflict with the Constitution of the State

of Tennessee, article 11, section 8, which declares "that no cor-"poration shall be created, or its powers increased or dimin-"ished by special laws, but the General Assembly shall provide "by general laws for the organization of all corporations here-"after created, which laws may at any time be altered or "repealed, and no such alteration or repeal shall interfere with "or divest rights which have become vested."

The statutes then existing which authorized the issuance of the bonds and coupons, and the making of the contracts under which complainants' obligations arose, empowered the municipal authorities of the city of Memphis, to levy and collect a tax for their payment.

The power of taxation is a contract, within the meaning of the Constitution, and cannot be withdrawn until the contract is satisfied; the State and corporation in such a case are equally bound.

Van Hoffman v. City of Quincy, 4 Wall., 534.
Suter v. Madison, 15 Wis., 36.
Smith v. Appleton, 19 Wis., 469.

The laws which exist at the time of making a contract, and in the place where it is made and to be performed, enter into and make a part of it. This embrances those laws alike which affect its validity, construction, discharge and enforcement. The remedy or means of enforcing a contract is a part of that "obligation" of a contract, which the Constitution protects against being impaired by any law passed by a State.

Walker v. Whitehead, 16 Wall., 315.
Furman v. Nichol, 8 Wall., 44.

Entering into the contract of the appellees, and the municipality of Memphis, was the right to sue in the courts—the right to have levied and collected an annual tax upon all taxable property, and to have a fund collected wherewith to pay the bonds at their maturity.

A subsequent statute which authorized a diversion of the fund would be void.

People v. Supervisors, 12 Cal., 300.

People v. Woods, 7 Cal., 579.
Western Saving Fund v. Pennsylvania, 31 Penn., 185.
People v. Bond, 10 Cal., 563.
People v. Tellinghast, 10 Cal., 584.
English v. Supervisors, 19 Cal., 172.
Trustees v. Bailey, 10 Fla., 12.

And any legislation which withdrew the power to levy and collect a tax for payment of the coupons and bonds of the city, would impair the obligation of the contract.

Mearhert v. N. O., 2 Woods, 108.
Ranger v. N. O., Ib., 128.

The Supreme Court of Tennessee, in the case of *Luehrman vs. Taxing District*, MSS., 1879, expressly reserve the question as to the effect of the legislation of 1879 upon the rights of creditors. No creditor was before the Court, but Mr. Justice Cooper, in the opinion, says: "The effect of what has been done, on the rights of creditors, is not before us, and no opinion is expressed. We merely hold that the previous charters of Memphis have been validly repealed, and that the same people and territory have been constitutionally incorporated under a general law providing for the organization of municipal corporations."

The decision last cited, formulated, is, as between the State and Memphis, its old charter has been repealed and a new municipality created under another name.

It is not the repeal of the charter we complain of, but of so much of the legislation as withdraws the power of taxation to pay outstanding and maturing debts; to provide a fund for the ultimate payment of the bonded debt, and diverted funds already collected and in process of collection, and all the assets of Memphis. We concede the charter of Memphis can be, as between it and the State, repealed, if third parties are not affected.

If the power of taxation is a contract, its subsequent withdrawal, by statute or otherwise, no matter how, is void.

When municipal corporations exist alone for public purposes,

they may be destroyed; but when clothed with power to sue and be sued, to contract and be contracted with, and these contracts are unperformed, they are beyond legislative control. They have two sides—one private, the other public.

1 Dillon, sec. 39.

Memphis vs. Looney, 1 Tenn. Leg. Reporter, 290.

Broughton vs. Pensacola, 3 Otto, 266.

The 12th section of chapter 11, Acts of 1879, among other things, provides: "And said Commissioners and said Trustee "and other governing agencies employed by this Act, are ex- "pressly prohibited from levying any taxes for any purpose; "that power being reserved to the Legislature. And no writ "of mandamus or other process shall lie, to compel them to "levy any taxes. Nor shall the said Commissioners or said "Trustee, nor the local government created by this Act, pay or "be liable for any debt created by said extinct corporation. "Nor shall any of the taxes collected under this Act ever be "used for the payment of any of said debts."

The language of the Constitution is general, and applies to public as well as private corporations, and such was the construction placed upon this section by the framers of the organic law.

When this article was considered in the convention which adopted the Constitution, an amendment was offered to have it apply alone to private corporations, which failed.

Journal of the Constitutional Convention of the State of Tennessee, January 10, 1870, page 302.

Prior to this time the term "corporation," as used in the Constitution of Tennessee of 1834, was considered to mean both public and private corporations.

1 Head, 24.

The change in the phraseology of the section of the Constitution cited, and the one on the same subject of 1834, Mr. Justice Cooper, in *Ex parte* Burns, says, was simply to bring the last clause in harmony with the first, and carry into the Constitution a provision making that general legislation, sus-

tained in 1 Head, p. 24, imperative, which had previously been discretionary with the Legislature.

Ex parte Burns, 1 Cooper, Tenn. Ch., p. 90.

By the Code of Tennessee, it is provided, "that the repeal "of a statute shall not affect any right which accrued, any debt "imposed, any penalty incurred, nor any proceedings com- "menced under or by virtue of the statute repealed."

Code of Tennessee, section 49.

These bills allege, that prior to the attempted repeal of the charter, proceedings had been instituted to compel the levy and collection of a tax, and that taxes had been levied and collected, to pay complainants' demands.

Mr. Justice Strong, in delivering the opinion of this Court, in *Memphis* v. *The United States*, said: "Thus has been es- "tablished a rule for the construction of repealing statutes. "* * * * * So when the alternative mandamus was is- "sued, March 22, 1875, a proceeding was commenced under "and by virtue of the statute. And if the repealing Act af- "fected that proceeding or took away the right the relator had "in force at the time, it was retrospective in its operation and "was therefore prohibited by the Constitution."

97 U. S., 398.

And the Supreme Court of Tennessee, in *Fisher's Negroes* v. *Dabbs*, said: "A distinction between the right and the "remedy is made and exists. But where the remedy has at- "tached itself to the right, and is being prosecuted by 'due "course of law,' to separate between them and take away the "remedy is to do violence to the right, and comes within the "reason of that provision of our Constitution which prohibits "retrospective, or, in other words, retroactive laws from being "passed, or laws impairing the obligation of contracts."

6 Yerger, 138.

3 Coldwell, 122.

The bill of the Ahrens Manufacturing Company sets forth, that by an Act of the Legislature of Tennessee, entitled, "An

Act to regulate and organize municipal corporations of certain population, and for the increase and diminution of their powers," power was granted to Memphis to levy and collect a tax of "one dollar and sixty cents on each hundred dollars' worth of taxable property in ~~such~~ said city." * * Sec. 63, Act 1875, page 159. That of this amount there was a legislative appropriation of twenty cents to the payment of interest on the bonded debt; twenty-five cents to provide a sinking fund to retire the bonded indebtedness, and five cents to the payment of judgments. The bill further avers that the defendant, Geo. B. Fleece, has collected of the judgment tax several hundred dollars.

The language of section 81 of this Act is, "that all laws "and parts of laws in conflict with this Act, and also chapter "26 of the private Acts of 1869 and 1870, entitled an Act to "reduce the charter of the city of Memphis, and the several "Acts amendatory thereof, into one Act, and to revise the same, "'passed December 1, 1869,' also chapter 67 of the public "Acts of 1873, entitled an Act to amend the charters of all "incorporate towns and cities in the State, passed March, 1873, "and also section 81, of chapter 118, of the Acts of 1873, * * "be and the same are hereby repealed."

Under this general law there was an attempted dissolution of the old corporation of Memphis and the creation of a new one.

So far as this law affected creditors, it was conceded to be unconstitutional; but as between the State and Memphis, it was valid.

The inhabitants of the old boundaries of Memphis were rehabilitated with corporate powers; all prior charters were repealed.

This was the only charter of Memphis when the Acts of 1879 were passed.

They attempted to repeal this general law, under which Memphis was an organized corporation, and therefore are within the inhibition of section 8 of article 11, Constitution 1870.

III.

Upon the third proposition, we insist that, in the view of equity, the property of a corporation constitutes a trust fund pledged to the payment of the debts of creditors. And if a municipal corporation upon the surrender, or extinction in other ways, of its charter, is possessed of any property, a court of equity will take possession of it for the benefit of the creditors of the corporation.

Broughton v. Pensacola, 93 U. S., 269.
Field on Corporations, sec. 492.

IV.

On the fourth proposition, conceding for the sake of the argument, the validity of the Act repealing the charter of Memphis, we say, that the ancient doctrine, that upon the repeal of the charter of a corporation, its debts were extinguished, and its real property reverted to the grantors, and its personal property vested in the State, has been so far modified by modern adjudication that a Court of Equity will now lay hold of the property of the dissolved corporation and administer it for the benefit of its creditors.

The obligation of contracts made whilst the corporation was in existence survives its dissolution, and the contracts may be enforced by a Court of Equity, so far as to subject to their satisfaction any property possessed by the corporation at the time of its dissolution.

Broughton vs. Pensacola, 93 U. S., 268.
Currin vs. Ark., 15 Howard, 539.
Code of Tennessee, sec. 3426.

V.

The fifth proposition arises upon an assumption that the repealing Act is valid, and that its effect is not to extinguish all claims, debts, dues and demands to and from Memphis, and presents the question: has the Court jurisdiction to collect taxes which have been lawfully assessed by said municipal

corporation, and due before the repeal of its charter? A tax assessed is a debt due to the corporation.

That the Court has the power to subject all debts due to the defendant corporation to the payment of complainants' demands, is established by the authorities cited above.

VI AND VII.

The sixth and seventh propositions involve questions more of detail than of the jurisdiction of the Court. If the debts due to the city of Memphis have any liens to secure their payment, these liens are but incidents of the debts; and the power of the Court to enforce the collection of the principal being, as we submit, established by the authorities we have cited, its jurisdiction to enforce all liens follows as a necessary consequence.

VIII.

JURISDICTION TO ENTERTAIN THE BILLS AND GRANT RELIEF.

It is apparant from the record that there has been for years a manifest disposition upon the part of the Legislature of Tennessee to enable Memphis to evade the payment of its obligations.

By the Act of 1875 the taxing power was limited; by those of 1879 it was entirely withdrawn, and nearly all assets of which Memphis was the trustee were diverted.

The several bills in these consolidated causes were filed prior to the passage of the Act of March 14, 1879, wherein, among other things, it is enacted, "that it shall not be lawful for such receiver to coerce payment of a greater sum than one-fifth part annually" of taxes due. Section 6, Acts 1879.

That back-taxes imposed prior to 1875 may be settled in valid indebtedness of Memphis, "and in addition to said Act, as follows, to-wit: in valid bonds whether due or not," and in other enumerated indebtedness—"at the following rates, to-wit: bonds known as compromise, or funded bonds, shall be received at their face value," all other enumerated indebtedness at fifty cents on the dollar, except judgments, and those at fifty-five cents. Section 5, Acts 1879, page 129.

There is no provision made in the Act of March 14, 1879, as to the direction or distribution of taxes which had been levied and collected, and were then in the hands of the defendant revenue officers.

By that, however, of January 29, 1879, it was enacted that all "the public buildings, squares, promenades, wharves, streets, alleys, parks, fire engines, hose and carriages, horses and wagons, engine houses, engineer's instruments, and all other property, real and personal, hitherto used by said corporations for public purposes," should be transferred "to the custody and control of the State." Act 1879, section 4, page 15.

This Act is silent as to what shall become of the funds arising from taxes already collected.

If we have succeeded in establishing that the power to tax was a contract, then the municipal authorities of Memphis were the trustees of all funds arising from taxes collected under and by virtue of all such contracts. The creditors entitled to the funds were the *cestui que* trust. Appellees show the trustees have abandoned their trusts, and a court of equity will not let a trust fail for want of a trustee.

The cases of *Rees* v. *Watertown*, 19 Wall., 116; *Bartley* v. *Levee Commissioners*, 93 U. S., 258, and *Heine* v. *The Levee Commissioners*, 19 Wallace, 655, relied upon by counsel for appellants, we respectfully submit are not authorities against the position assumed in these cases for the appellees. In all of those cases it was sought, by the aid of a Court of Chancery, to assess and levy a tax upon the property situated within the territorial limits of the defaulting municipalities. And this Court held that the assessing and levying of a tax was a legislative act, and could not be exercised by the judiciary through its officers; but the record in the cases at bar shows that the tax had been levied and assessed by the municipal authorities before the repeal of the charter, and that some of these taxes were specially levied for the benefit of the complainants, under mandates issuing from the Federal and State Courts, and the only thing now necessary to be done is the collection of these taxes. Record, pages 18, 31, 34, 43, 44.

The collection of a tax is purely a ministerial act, to be performed by an executive officer; and we submit, that in case he fails or refuses to perform this duty while in office, he can be compelled by the process of the Court; if a Collector resigns his office, or it otherwise becomes vacant, and the legislative department of the municipal government refuses to appoint a successor, or is itself abolished by Act of the State Legislature, leaving these taxes uncollected, it is competent for a Court of Chancery, through its own officers, to collect ~~their taxes~~ them.

Supervisors v. Rogers, 7 Wallace, 175.

The case of the *United States against Railroad Company*, 17 Wall., 322, is also relied upon by counsel for the appellants. It will be perceived by a reading of it, that the learned Justice who delivered the opinion of the Court, in his discussion of the powers of the Legislature, over the charters of public corporations, was doing so without any reference whatever to the rights of creditors, and the element of contract was not considered.

The doctrine in regard to the power of the Legislature over the charters of corporations established by all the cases, is to our mind, this: That the granting of a charter to a private corporation is a contract between the State and the corporators, and after it has been accepted, is protected by the Federal Constitution; but the erection of public corporations is for the benefit of the inhabitants, and a means of exercising a portion of the State sovereignty, such charters are subject to legislative control; but if power is granted to the municipality to incur indebtedness and levy taxes for its discharge, and the indebtedness is incurred, then the element of contract enters, the corporation becomes dual in its character, and the rights of creditors are beyond legislative interference.

IX.

In regard to the ninth proposition; in our view of these cases, we do not deem it necessary to argue that the Court has jurisdiction to afford the relief in the manner therein contemplated; but we submit that if the Acts of 1879, repealing

the charter of the city of Memphis and creating a Taxing District, are valid, then that the effect of those Acts is to constitute the Taxing District the successor of the defunct municipality, and liable for all its debts. That its Commissioners are compellable, under the mandate of the Court, to levy and collect a tax from all the taxable property and persons within its limits, sufficient to pay the demands of the complainants, and of all other creditors of the city of Memphis.

X.

The question presented by the tenth proposition has already been fully considered heretofore, and we do not deem it necessary to present to the Court any further considerations upon it.

XI.

The eleventh proposition presents the naked question: whether, after this Court has appointed a Receiver, its jurisdiction can be ousted by a statute appointing a State Receiver, and we submit that it cannot. Waiving, for the argument's sake, the embarrassments placed upon creditors by the statute, we submit that the appointment of a Receiver by this Court was a step taken by complainants toward the enforcement of their rights, and any subsequent statute which deprives them of that right would be retroactive and void.

Memphis v. The United States, 97 U. S., 298.

XII.

The twelfth proposition is embraced in the fifth, sixth, seventh and eleventh propositions, and must be controlled by the opinion of the Court upon them.

XIII.

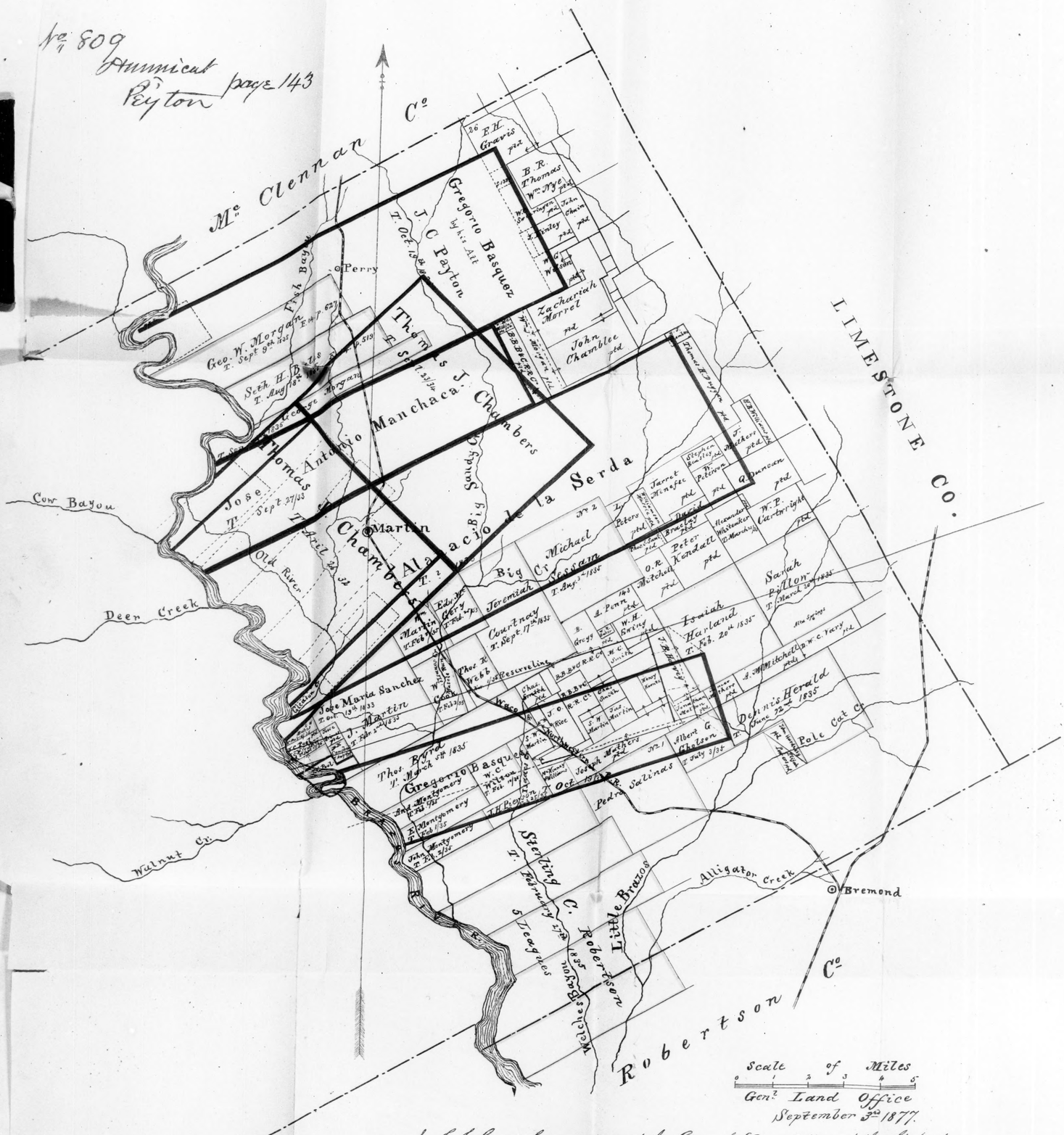
The thirteenth proposition has been fully discussed heretofore.

Upon the whole record, we respectfully submit that the judgment of the Circuit Court was proper, and that the same should be here affirmed.

JULIUS A. TAYLOR,

Of Counsel for Appellees.

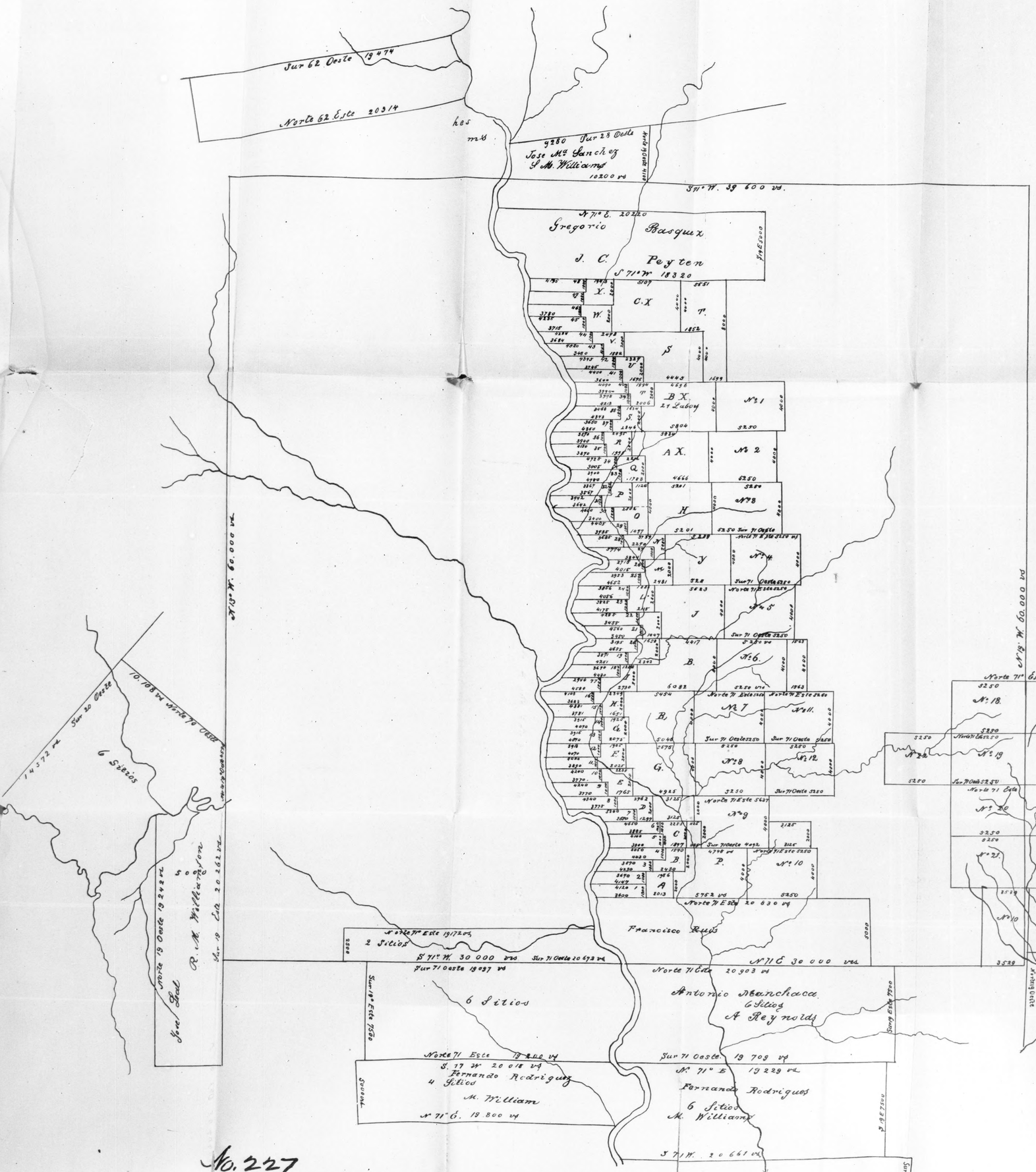
No. 809
Hunnicut
Peyton page 143



I. J. J. Groos Commissioner of the General Land Office of the State of Texas hereby certify that the above Sketch is a true & correct copy of a sketch made in this office on the 28th of December 1874.

In Testimony whereof I hereunto set my hand and affix the impress of the Seal of said Office the date above written

J. J. Groos
Commissioner Ld. Ld. Office



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Peyton page 49 – Certioran

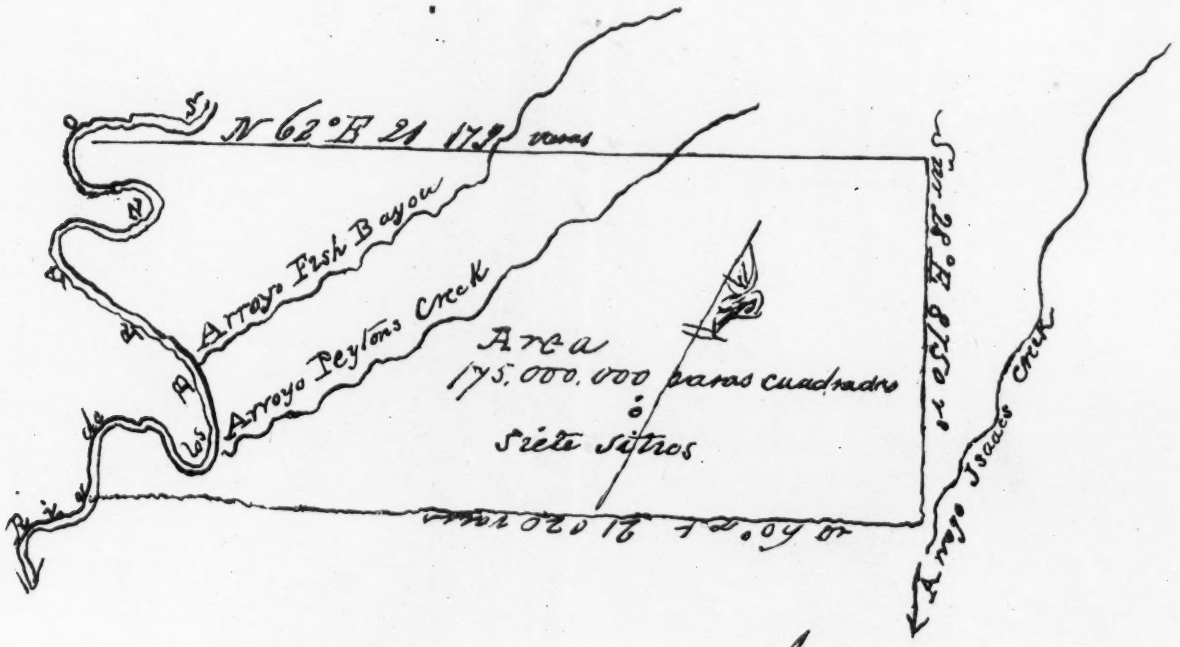
I. T. I. Groos Commissioner of the General Land Office of the State of Texas, do hereby certify, that the above sketch is a true and correct copy, taken from page 1 in Atlas E on file in this Office, representing Surveys, the fieldnotes of which are in Book D. "Upper Colony" title page marked Horatio Christmans Fieldbook of Surveys in the Reserve East of the Brazos 1834" containing notes of 4 Labore tracts and of 21 Labore tracts.

In testimony whereof, I hereunto set my hand and affix the impress of the Seal of said Office at Austin this the 21st day of November 1874.

J. T. Groos Commissioner

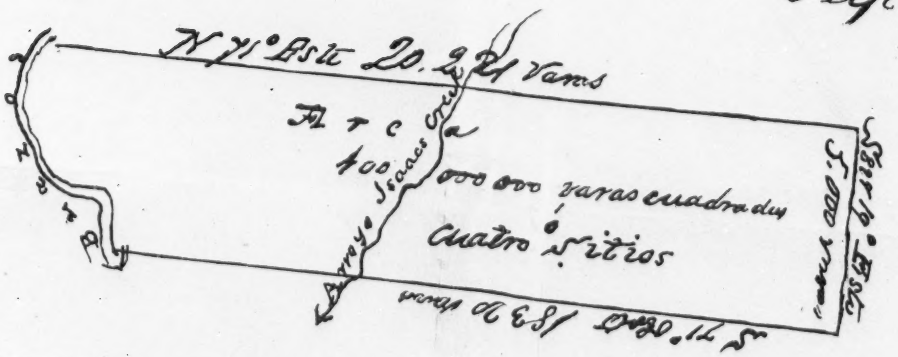
Copy of Map attached to and part of Spanish Documented and real Title for Eleven Leagues of Land on the East side of the Bayou

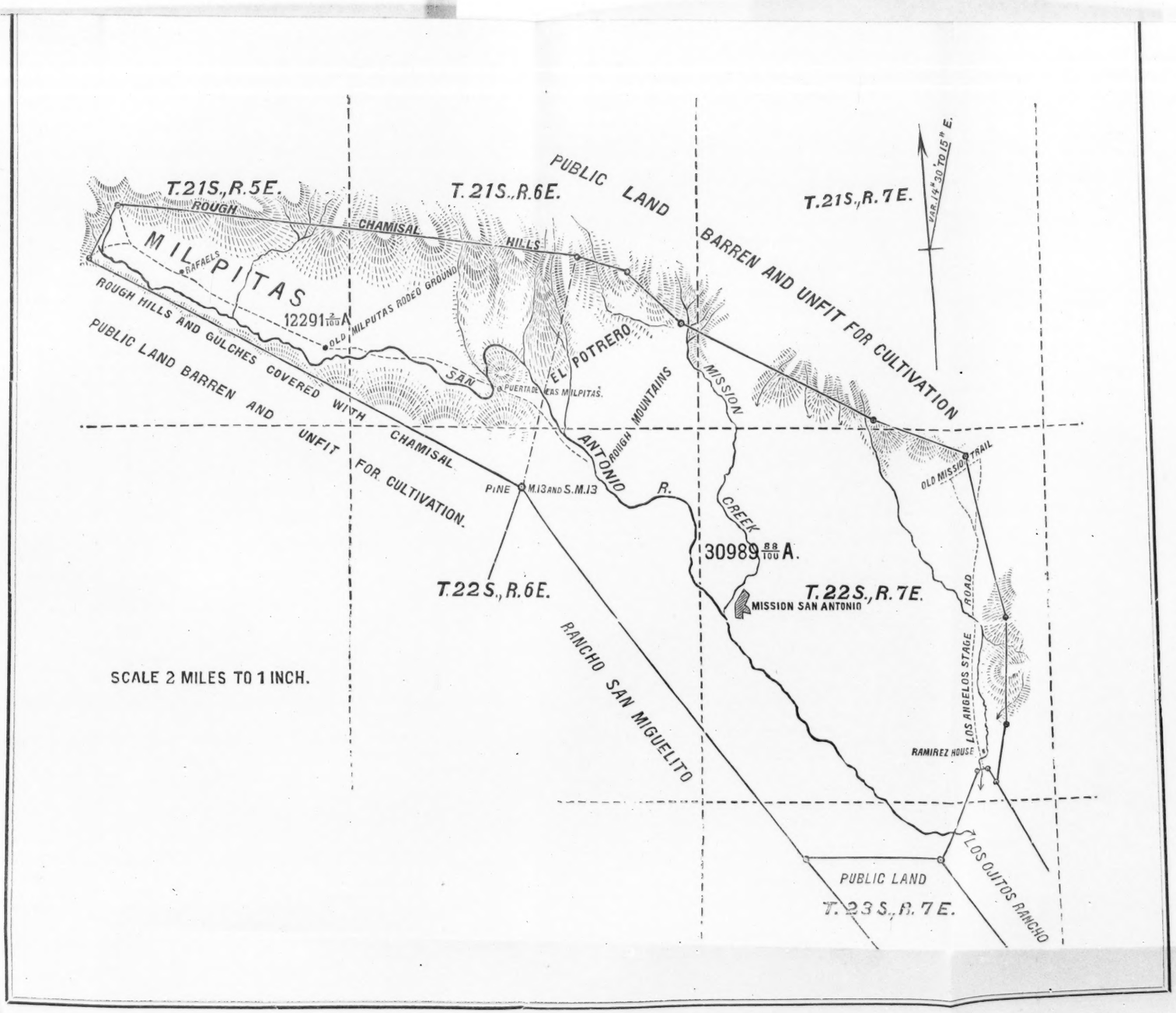
Jonathan C. Peyton atty for Gregorio Bunyes



4000 varas la pulgada

No. 227-
Hunnicut
v.
Peyton
page 57 Certificates

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T.21S.,R.6E.
T.21S.,R.7E.
PUBLIC LAND
BARREN AND UNFIT FOR CULTIVATION
VAR. 14° 30' TO 15° E.
ROUGH
CHAMISAL
HILLS
MILPITAS
RAFAELS
12291 2/100 A.
OLD MILPUTAS RODEO GROUND
ROUGH HILLS AND GULCHES COVERED WITH CHAMISAL
PUBLIC LAND BARREN AND UNFIT FOR CULTIVATION.
SAN
PUERTA DE LAS MILPITAS.
EL POTRERO
ROUGH MOUNTAINS
MISSION
OLD MISSION TRAIL
ANTONIO
R.
CREEK
PINE
M.13 AND S.M.13
30989 88/100 A.
T.22S.,R.6E.
T.22S.,R.7E.
MISSION SAN ANTONIO
ROAD
LOS ANGELOS STAGE
RAMIREZ HOUSE
RANCHO SAN MIGUELITO
LOS OJITOS RANCHO
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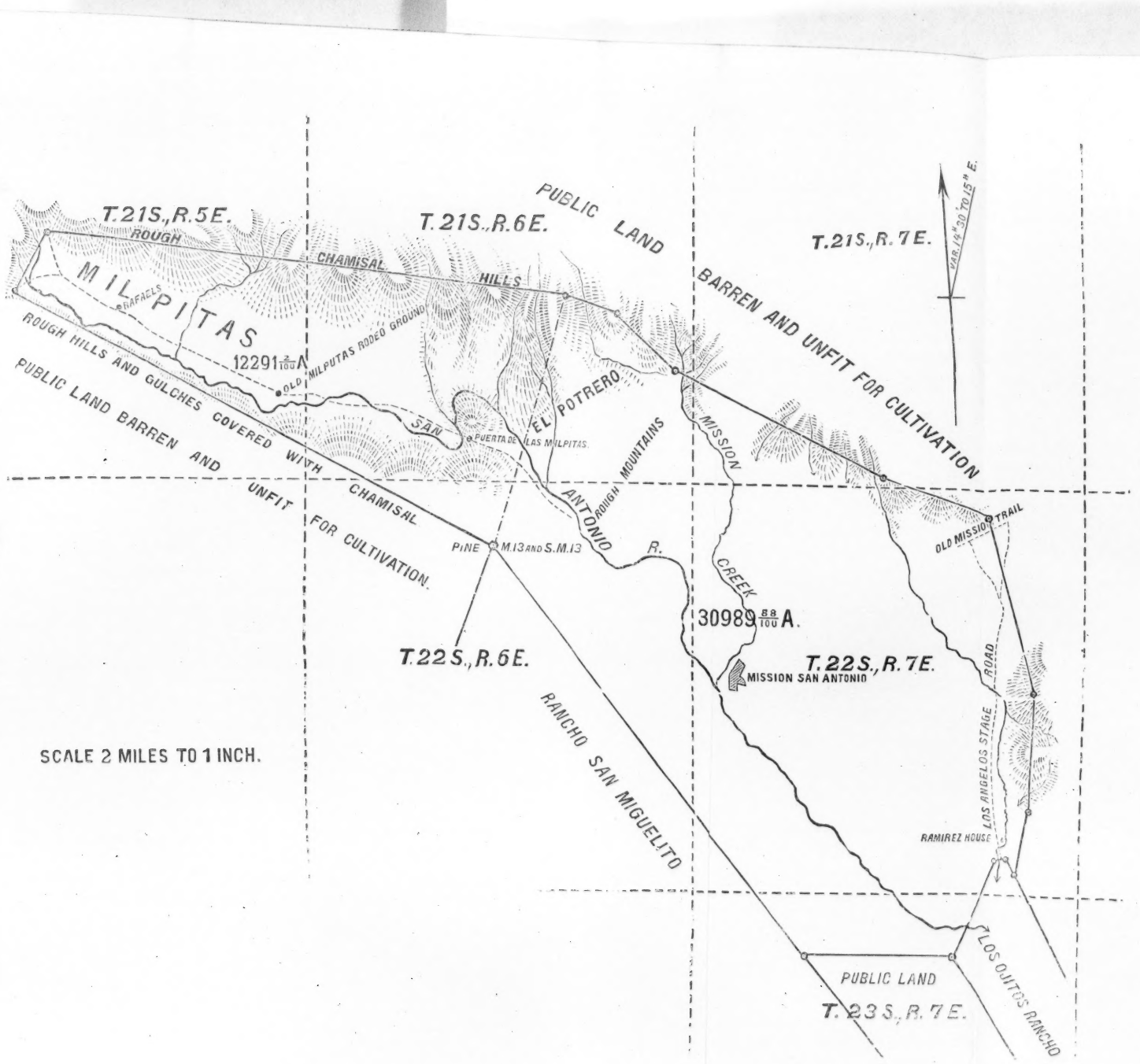
T.23S.,R.7E.
SCALE 2 MILES TO 1 INCH.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OLD MILPUTAS RODEO GROUND
ROUGH HILLS AND GULCHES COVERED WITH CHAMISAL
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EL POTRERO
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RAMIREZ HOUSE
RANCHO SAN MIGUELITO
LOS OLIVOS RANCHO
PUBLIC LAND
T.23S.,R.7E.
VAR. 14° 30' TO 15° E.
SCALE 2 MILES TO 1 INCH.

No. 131
Densmore et al
v.
Scofield et al

Addn to record page 19.

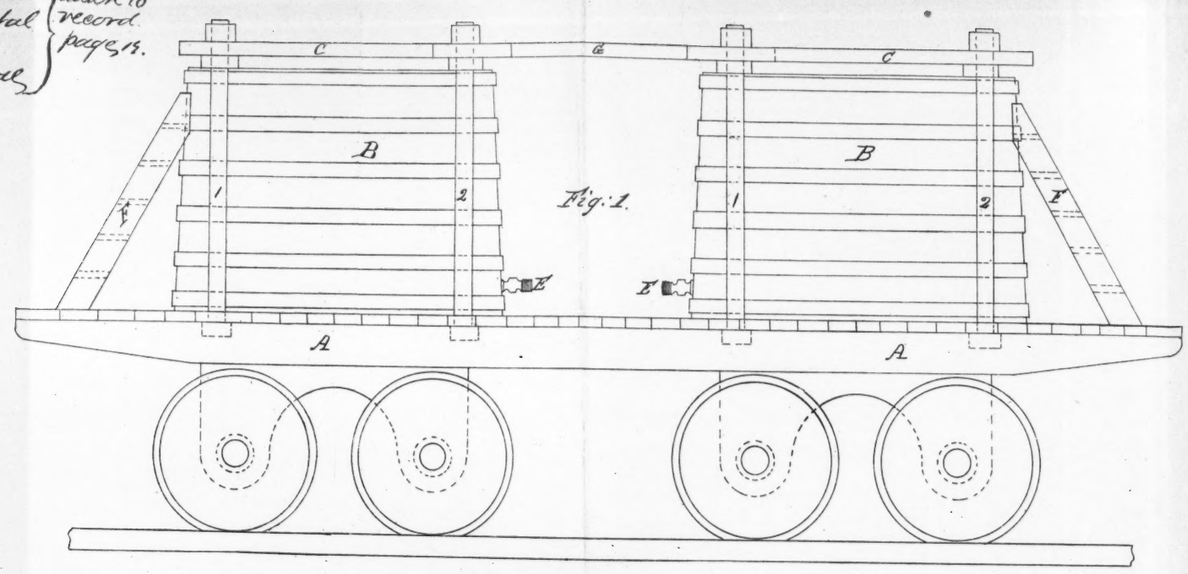


Fig: 1.

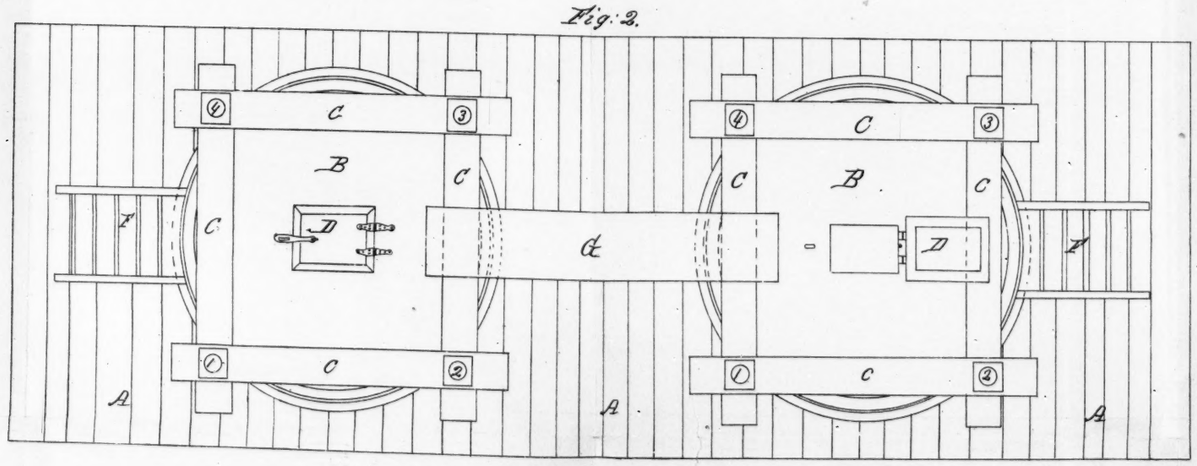
Side Elevation

James & Amos Densmore's
Bulk Oil Tank

Patented, April 10. 1866

No. 53,794.

Fig: 2.



Top View of Plan

No. 37.461.

John Scott's Impd. R.R. Car for Carrying Petroleum &c in the Bulk.

Patented Jany. 20th 1863.

Fig. 1.

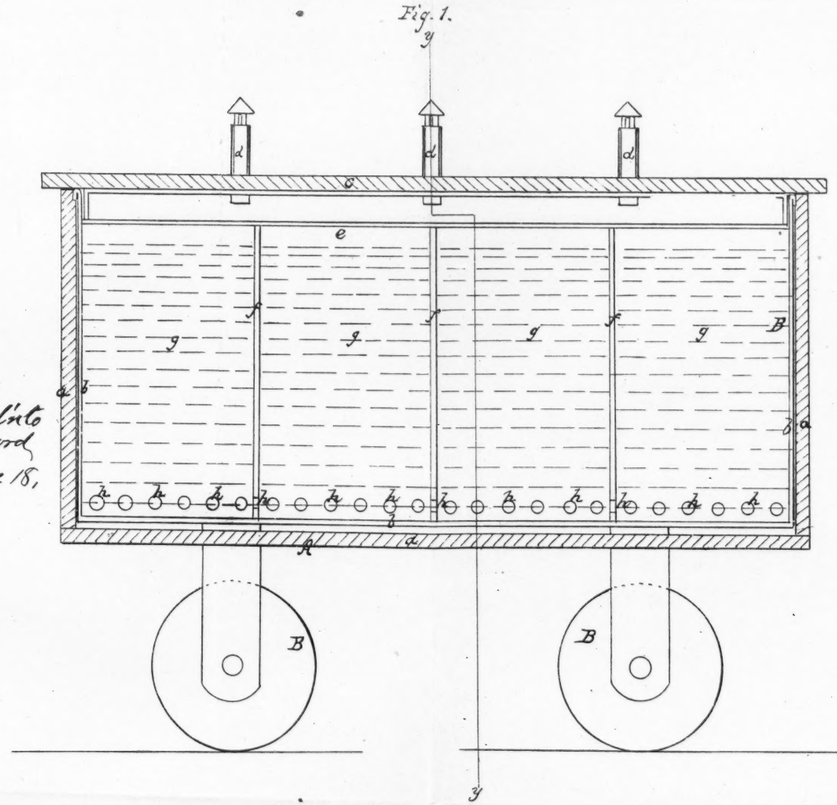
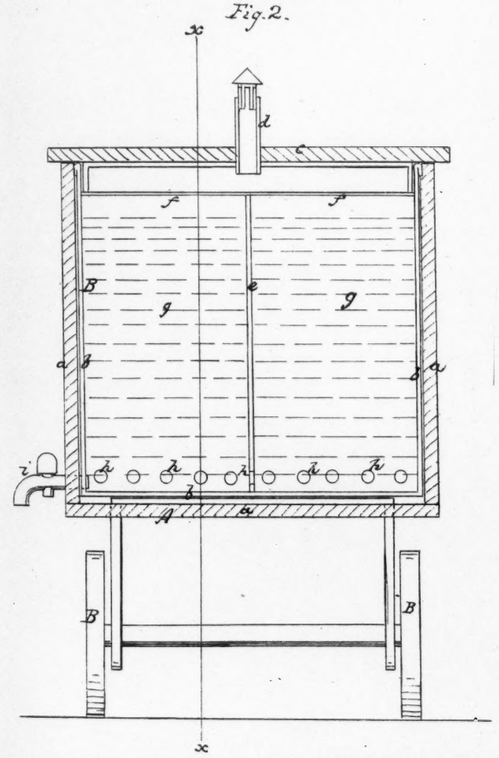


Fig. 2.



No. 131.
Densmore et al
v.
Scofield et al

add'n to record page 18.

UNITED STATES PATENT OFFICE.

JAMES DENSMORE AND AMOS DENSMORE, OF MEADVILLE, PENNSYLVANIA.

IMPROVED CAR FOR TRANSPORTING PETROLEUM.

Specification forming part of Letters Patent No. 53,794, dated April 10, 1866. Reissue No. **2,261**, dated May 29, 1866.

To all whom it may concern:

Be it known that we, JAMES DENSMORE and AMOS DENSMORE, of Meadville, Crawford county, Pennsylvania, have invented a new and Improved Oil-Tank Car, for carrying petroleum and other like liquid substances in bulk in tank on railway-cars; and the following full, clear, and exact description will show the construction and operation thereof.

On the accompanying drawings, Figure 1 is a side view, and Fig. 2 a top view, of our invention; and the letters marked thereon refer to and correspond with the same letters in the description.

On the platform of an ordinary railway-car, A A, erect two large, light, tight, firm, stout tanks, B B, of wood staves hooped or of sheet-iron riveted and calked, or of other material, and put each tank directly over one of the trucks, so that the strain of the weight of the load will be upon those parts of the car that are stronger and better able to bear it. On the top of each tank put a frame of four bars, C C C C. Through the corners of the frame, close to and outside of the tank, and down through the platform of the car, pass the bolts 1 2 3 4. On the ends of the bolts, above the frame and below the platform, put screws and nuts and washers, and fasten and press the tank down upon the car firmly by means of the frame and bolts and screws. Besides attaching and fastening the tank and car together, the frame and bolts will act as guys or braces and tend to prevent any shock or jar from the swaying of the car. Upon the platform, close to the outside and bottom of the tank, bolt the cleats or stops H H H H, to keep the tank firmly in its place and prevent any jar or moving from any sudden stopping or starting of the car. In the top head of each tank make a man-hole, through which to pour in the substance to be carried, also for a man to get into the tank for any purpose. Around the man-hole put a casing, and over the casing and man-hole put a man-head or cover, D, to prevent rain, snow, or anything from leaking or falling into the tank. At the bottom of each tank put in a faucet, E, by which to draw off the contents. Up the side of each tank, next the end of the car, put the steps F, to enable one to get on and off the tank readily; and across from one tank to the other put the runway G, to enable brakemen and others to pass over the cars with facility.

The nature of our invention consists in combining two large, light, tight, firm, stout tanks with an ordinary railway-car and making the tanks practically a part of the car, so as to carry the desired substance in bulk in the car itself, or in a permanent fixture and part thereof, instead of in barrels, casks, hogsheads, tierces, or other movable vessels or packages, as is now universally done on railway-cars, and thereby save carrying the weight of the barrels, casks, hogsheads, tierces, or other movable vessels or packages.

What we claim as our invention, and desire to secure by Letters Patent, is—

1. The two tanks B B, or their equivalent, when constructed and operating in combination with an ordinary railway-car, substantially as and for the purposes set forth.

2. The two tanks B B, or their equivalent, when set directly, or nearly so, over the car-trucks, and when constructed and operating in combination with an ordinary railway-car, substantially as and for the purposes set forth.

3. The frames C C C C, the bolts 1, 2, 3, and 4, and the cleats H H H H, when constructed and operating in combination with tanks B B and an ordinary railway-car, substantially as and for the purposes set forth.

4. The steps F F, the man-holes and man-heads D D, the faucets E E, and the runway G, when constructed and arranged in combination with tanks B B and an ordinary railway-car, substantially as herein set forth and described.

JAMES DENSMORE.
AMOS DENSMORE.

Witnesses:
C. M. BOUSH,
M. SCHMIDT.

J. & A. Densmore.
Freight Car.

No. 2,261. Reissued May 29, 1866.

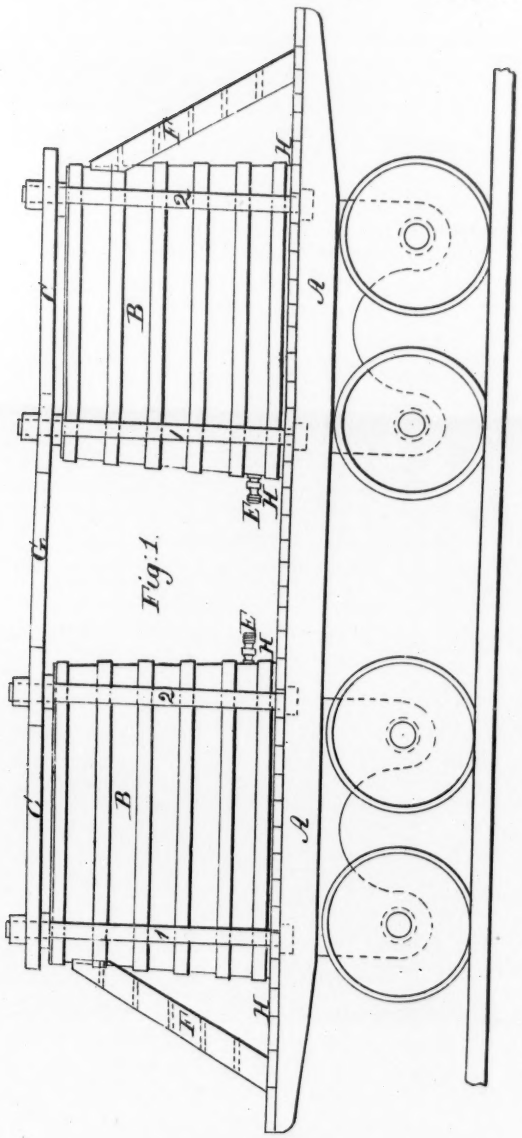


Fig. 1.

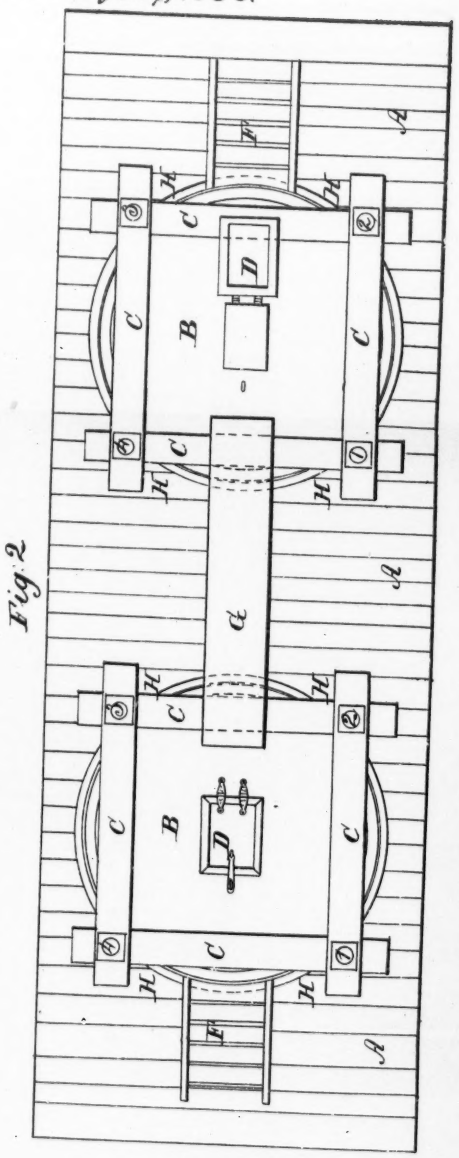


Fig. 2

Witnesses
Thos. Lay Knox
M. A. Clancy

Inventor;
James Densmore
Amos Densmore.

N. PETERS, PHOTO-LITHOGRAPHER, WASHINGTON, D. C.

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Denamore et al
v.
Scofield et al
} Add'n to record page 27.

No. 38,765.

S. J. Seely's Impt. in the Construction of Railway Cars.

Patented June 2 1863.

Fig: 1.

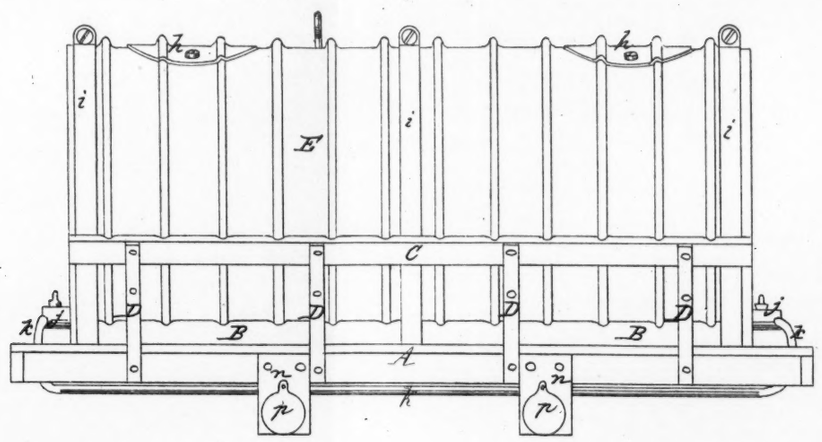


Fig: 4.

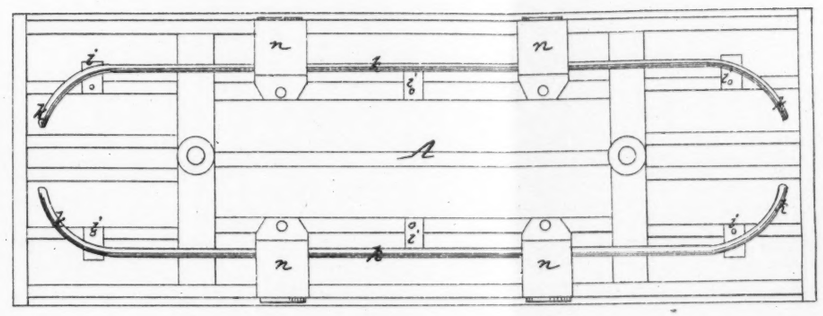


Fig: 2.

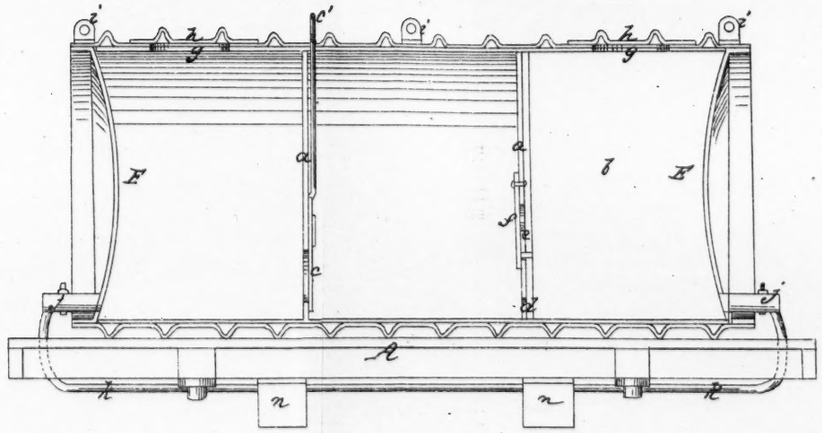
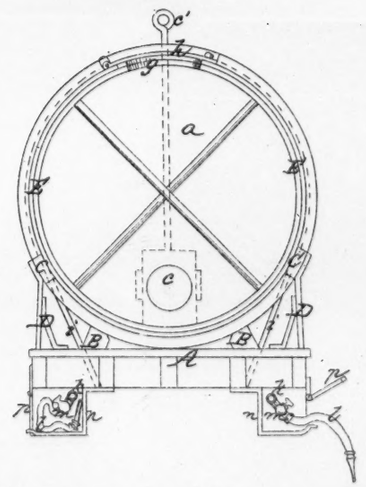


Fig: 3.

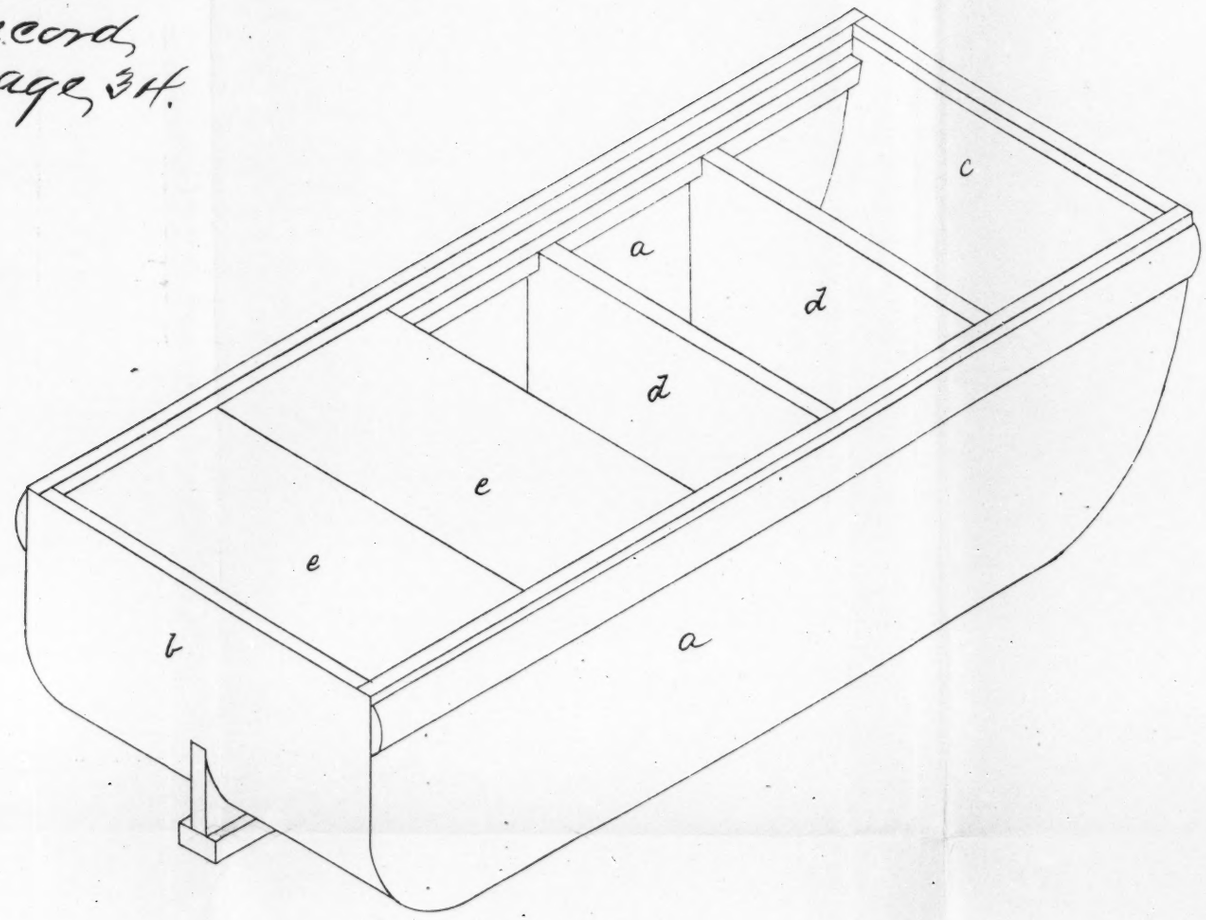


No. 34 359-

Richard C. Clyde Improvement in Vessels for carrying Oil

Patented Feby 11. 1862.

No. 131-
Densmore et al
v.
Scofield et al
} addn to record page 34.



No. 46,906

W. W. HORTON

Impro^d method of Transporting Oil in Bulk

Patented March 21. 1865.

No. 131.
Denamore et al
v
Scofield et al
} add'n to record page 445

Fig 4

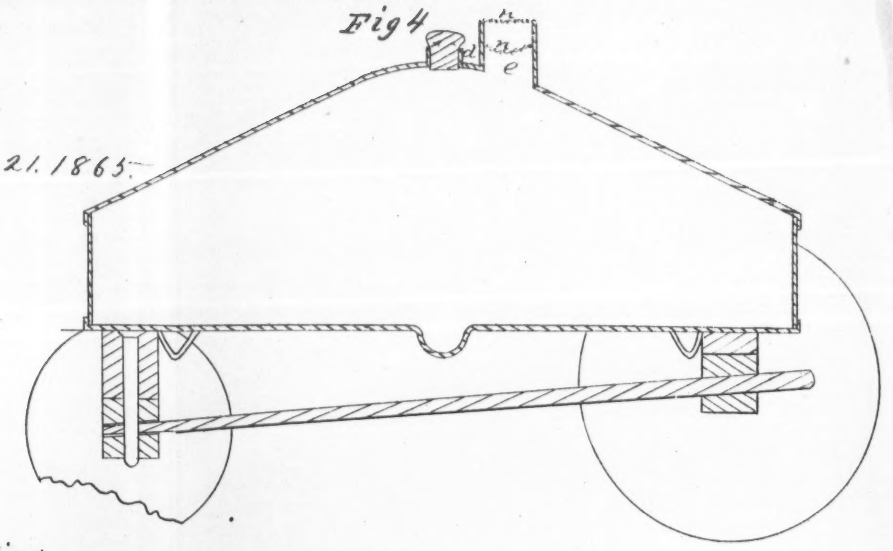


Fig: 1.

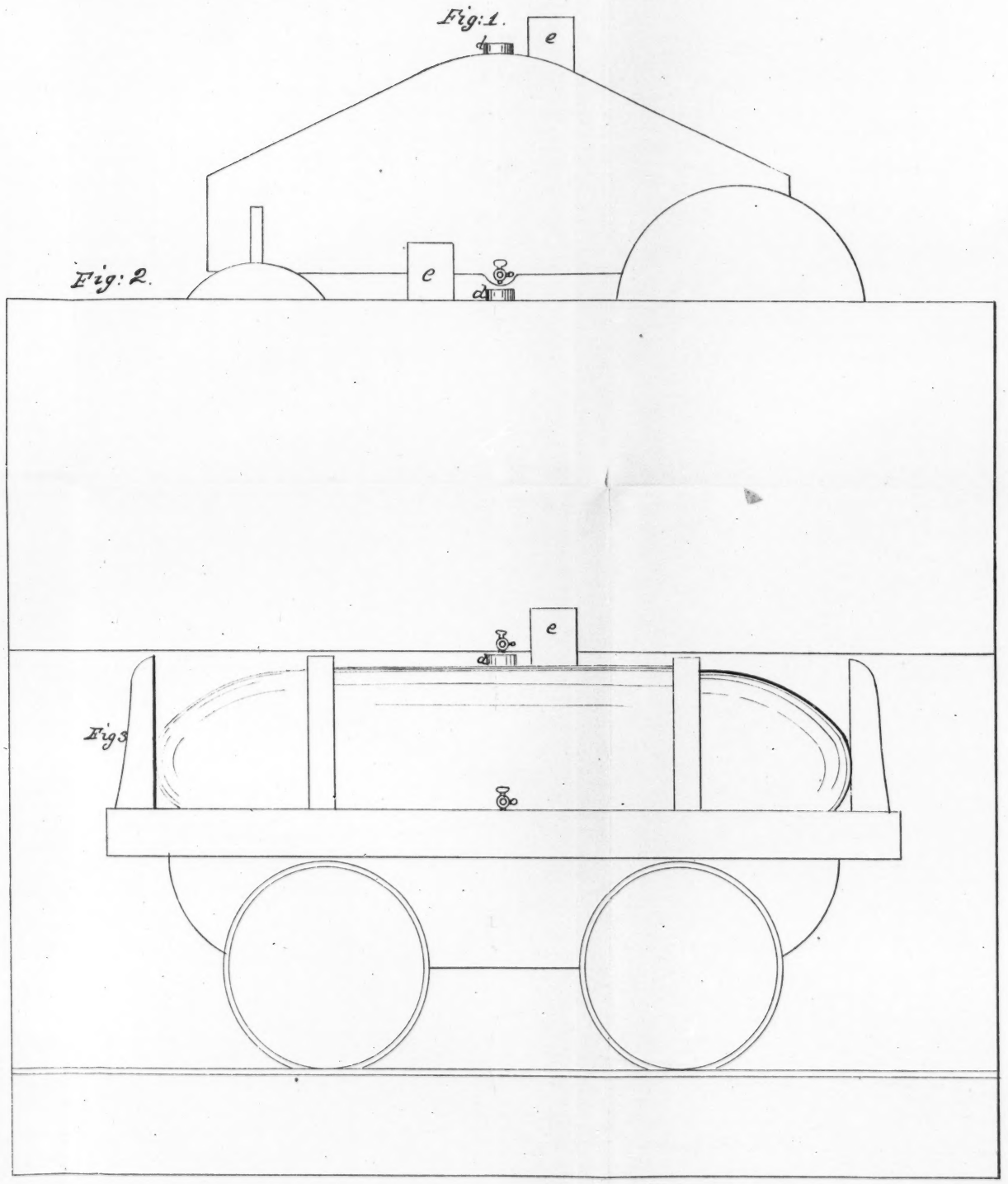


Fig: 2.

Fig 3

№ 50,126.

GEORGE W. HOWARD

Tank for Transporting and Storing Oil.

Patented Sept. 26 1865.

Fig: 1.

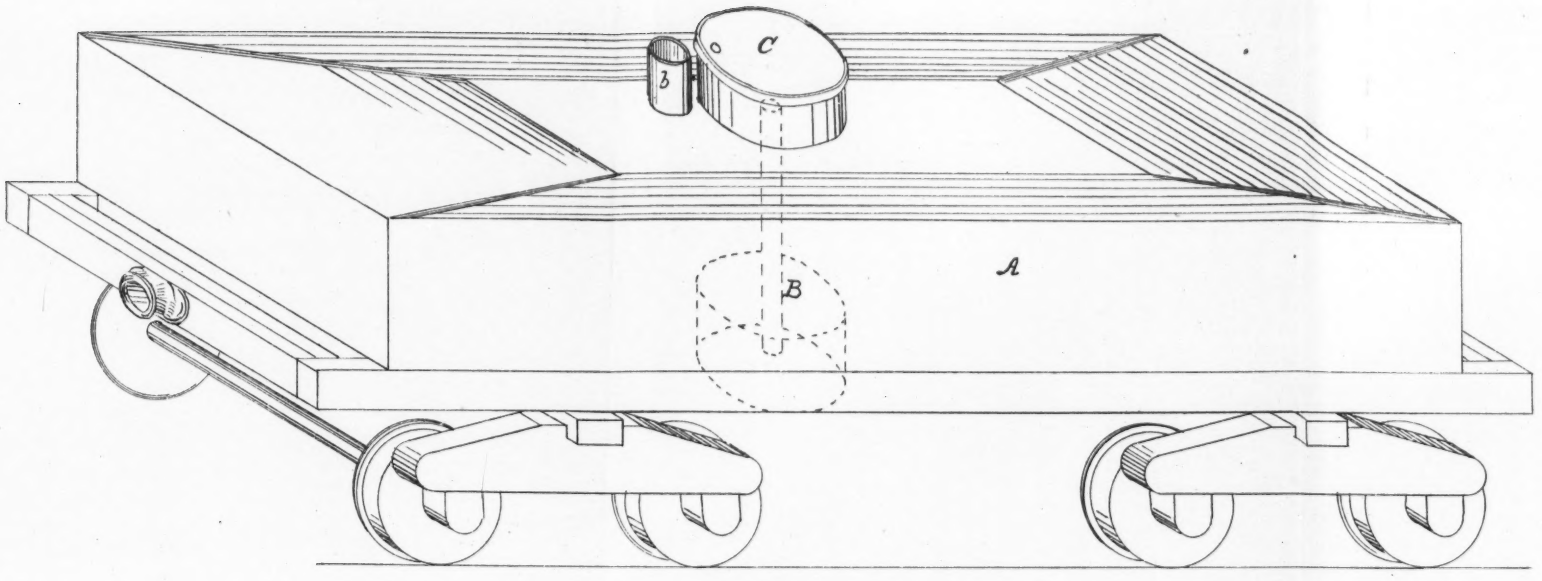
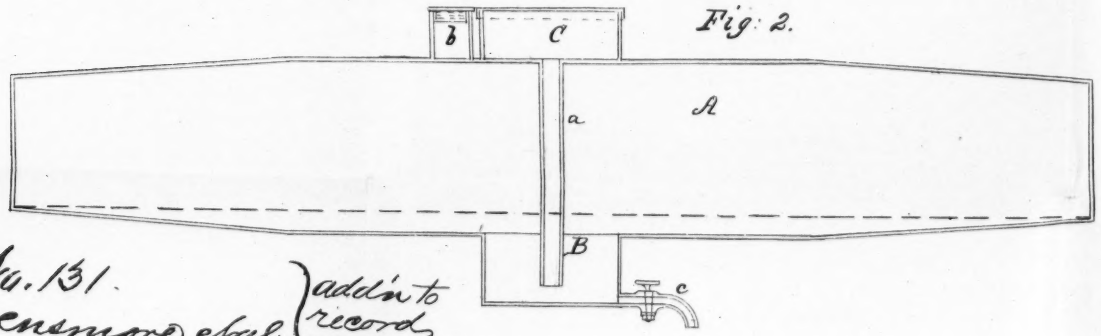
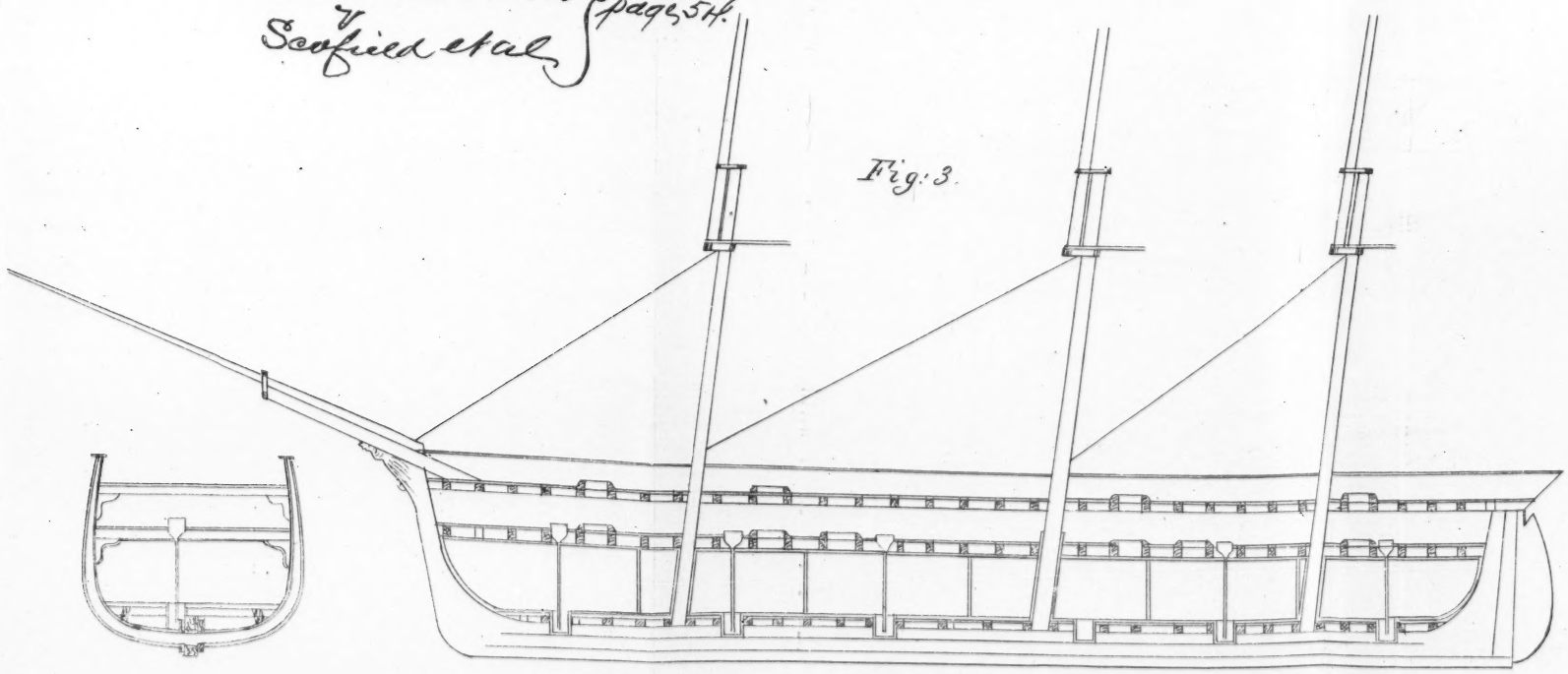


Fig: 2.



No. 131.
Densmore et al
v.
Scofield et al
} addn to record page 54.

Fig: 3.



Joel F. Keeler

Improved Mode of Constructing R. R. Car trusses

No. 2,031

Reissued July 18, 1865

No. 131 – Densmore et al v. Scofield et al } addn to record, page 64.

Fig. 1

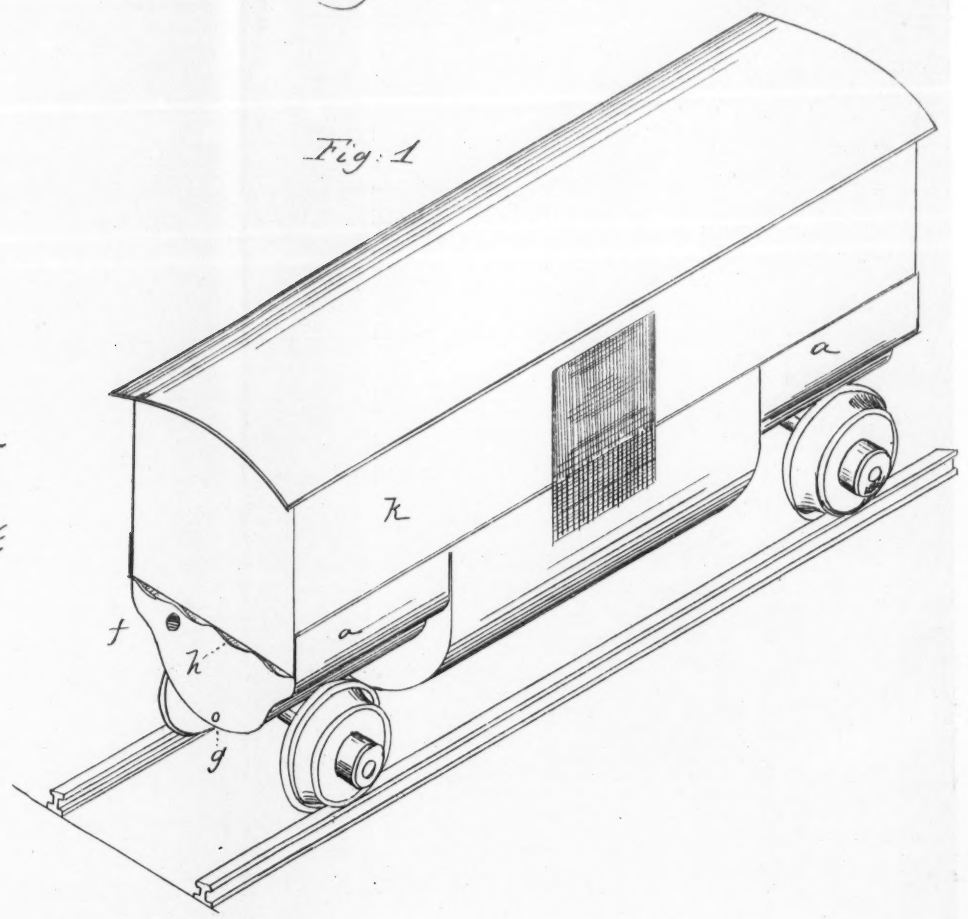


Fig. 3

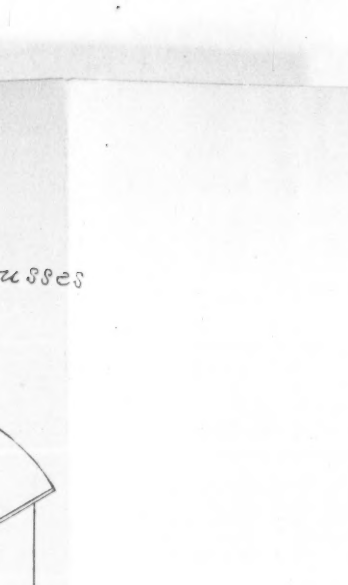


Fig. 2

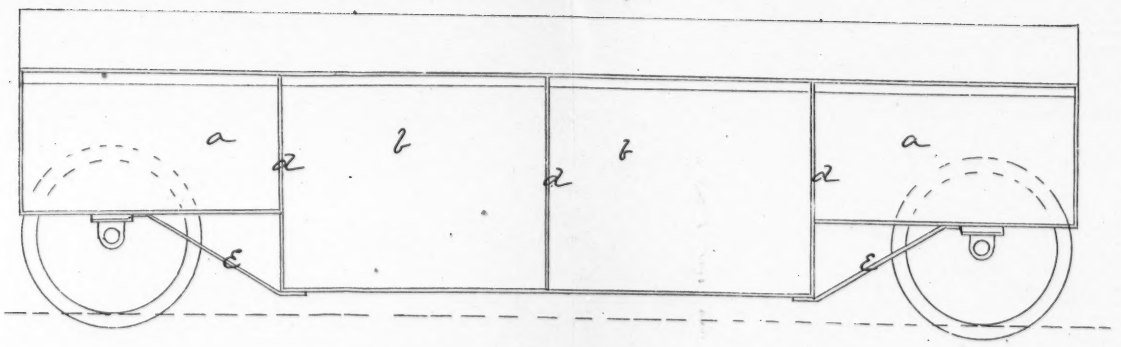
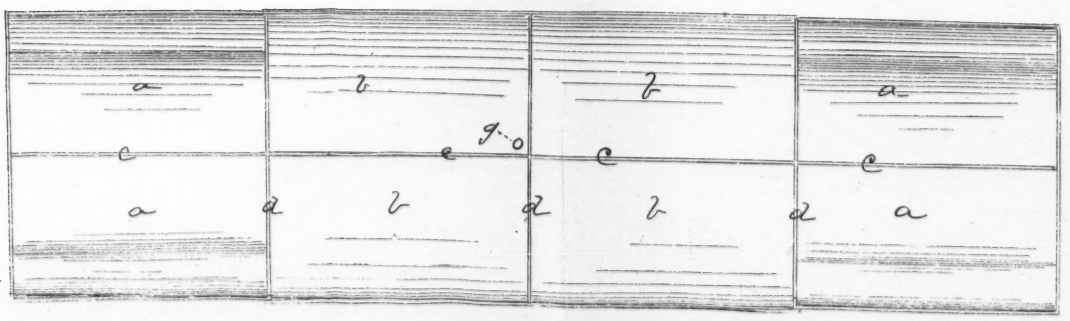


Fig 4



Joel F Keeler. Portable Tank for Oil &c

No. 53,451 -

Patented March 27. 1866.

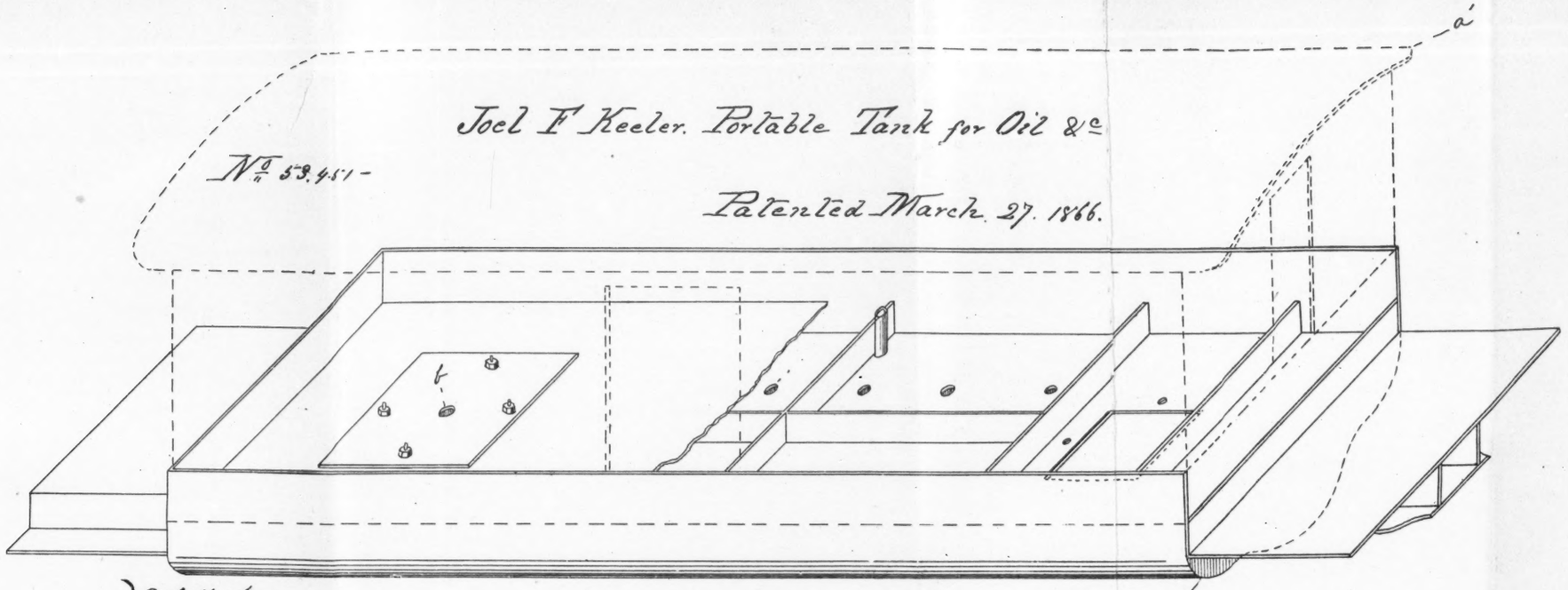


Fig: 1.

No. 131 -
Densmore et al
v.
Scofield et al
} addn to record page 70.

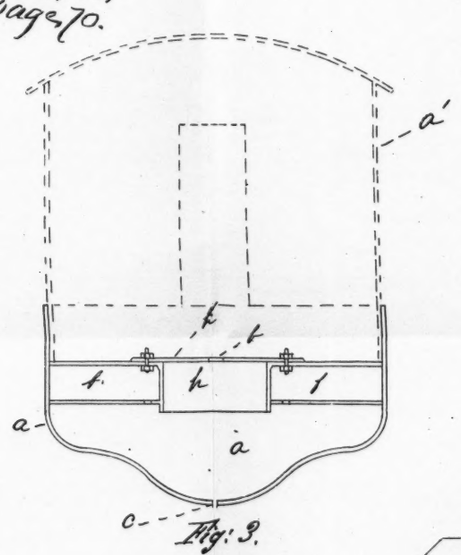


Fig: 3.

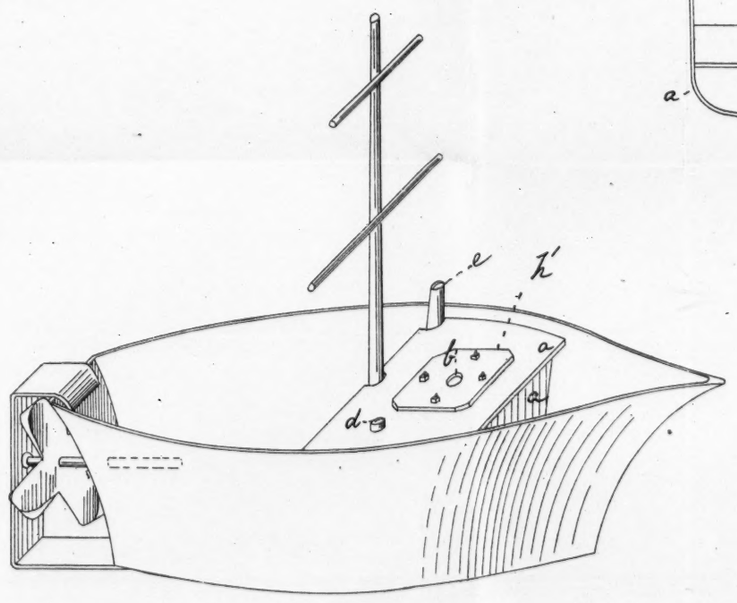


Fig: 2

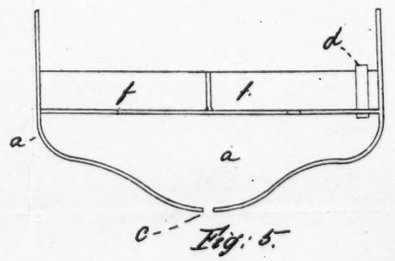


Fig: 5.

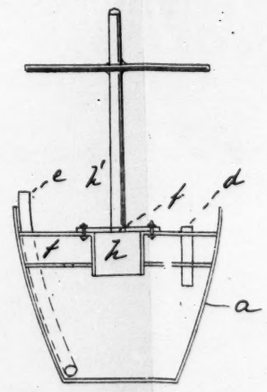


Fig: 4.

J. F. Keeler.

R. R. Car for Transporting Petroleum.

No. 45,834. Patented Jan. 10, 1865.

No. 131 - Densmore et al v. Scofield et al } add'n to record, page 77.

Fig. 1.

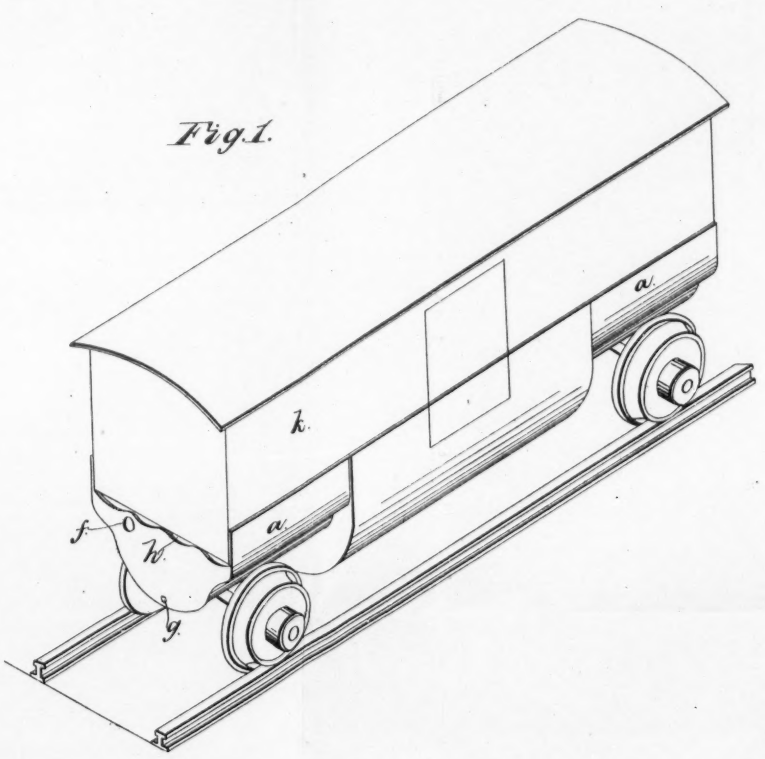


Fig. 3.

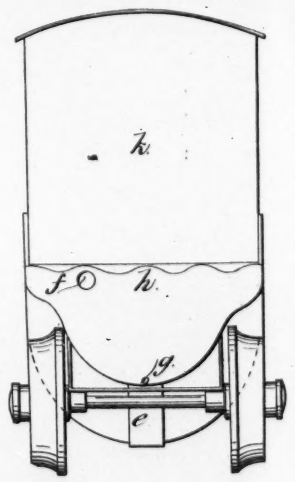


Fig. 2.

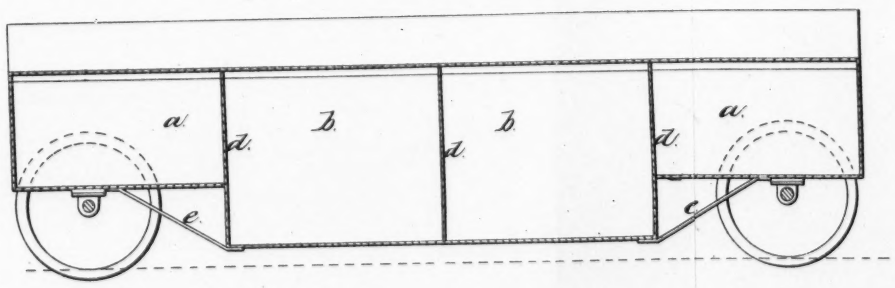
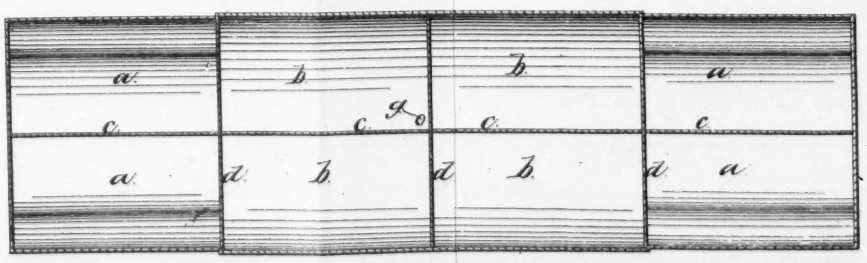


Fig. 4.



Witnesses.

Samuel Graham

Frank W. Kennedy

Inventor.

J. F. Keeler

No. 1399–

No. 131–
Denemore et al
v.
Scofield et al
} addn to record, page 84.

S. J. Selly's Impt. in Corrugated Iron Vessels.

Patented May. 21. 1861–

Fig: 1.

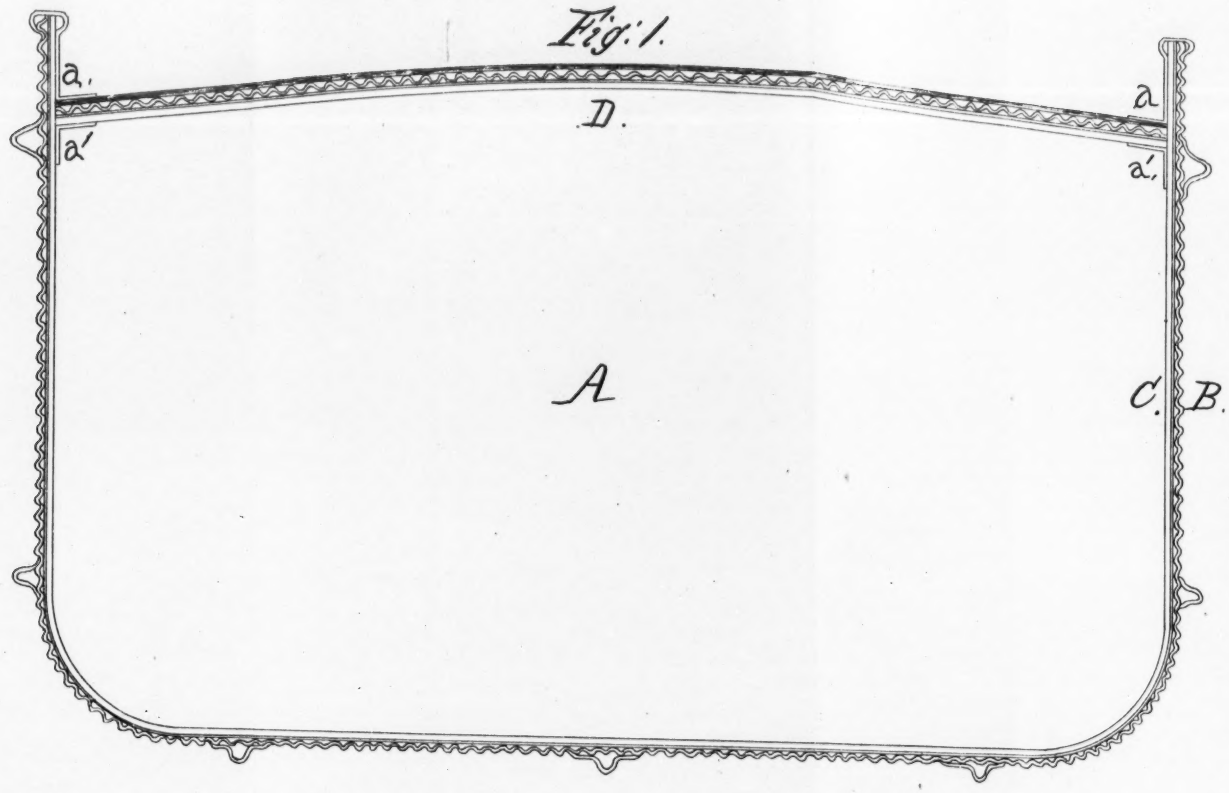


Fig: 2. B.

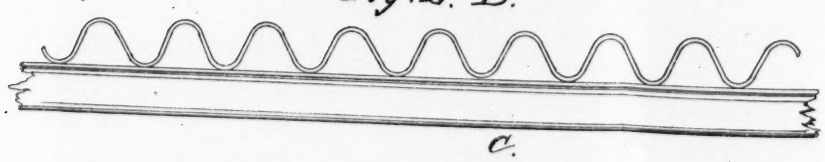
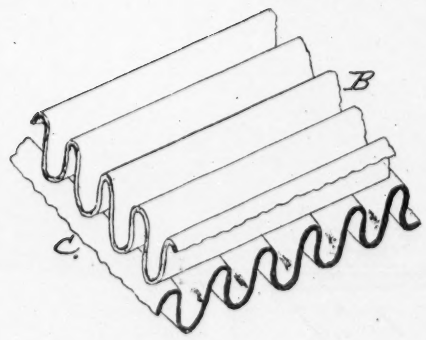


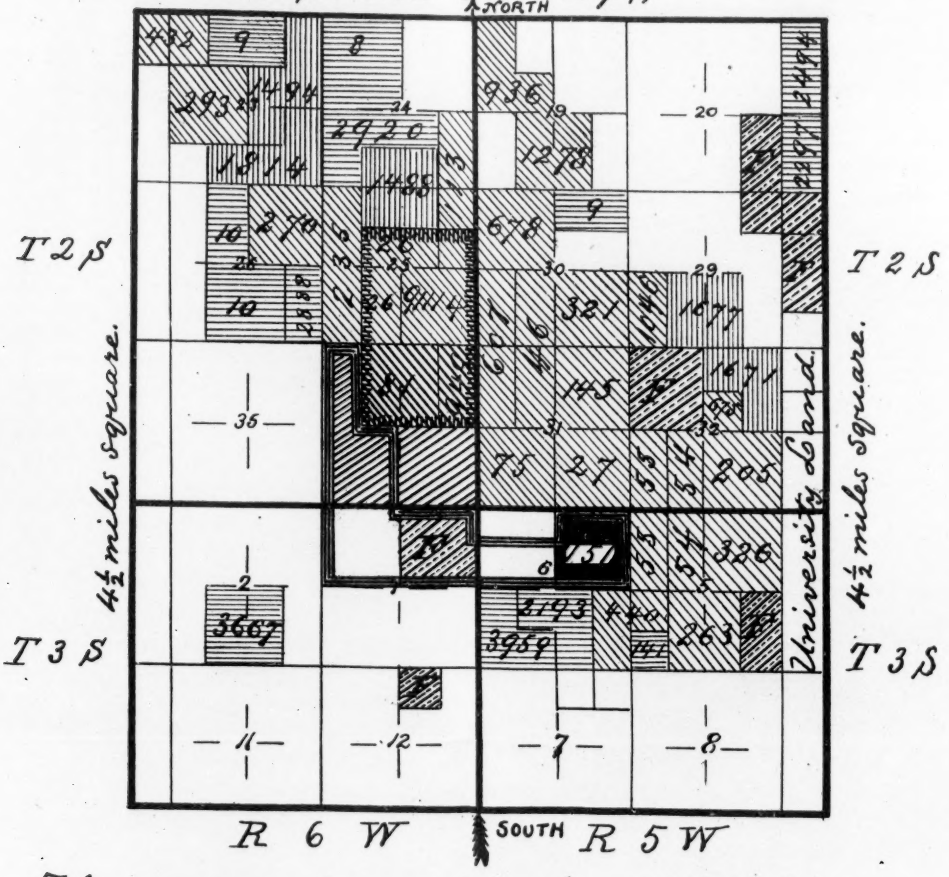
Fig: 3.



Patents issued before McBride's patent.
Supposed situs of city during contest.
Entries not patented.
Patents issued after McBride's patent.
Filings made since October, 1879.
Exterior limits of Townsite application
Same, of actual situs of city.
The land of Thomas McBride.

Map of Grantsville, Utah.

(executed Oct. 1879.)



The area embraced in the application for a Town-site patent, made by the City of Grantsville on October 22d, 1879, is 960 $\frac{22}{100}$ acres.

The actual situs of Grantsville, as stated by the Register of the U.S. Land Office at Salt Lake City in his official report, dated Oct. 25th, 1879, is entirely outside the area of the Town-site application

37a

36a

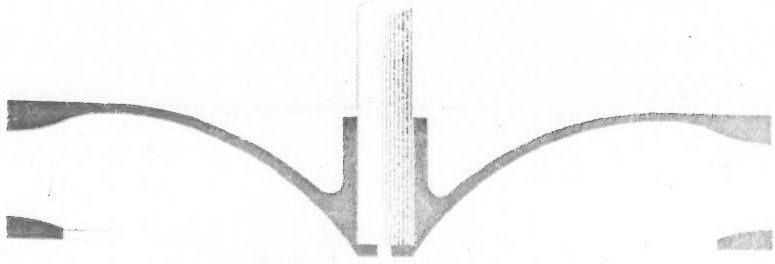


Fig. 1.

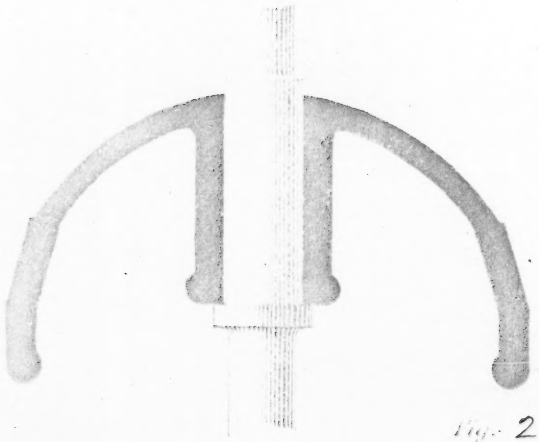


Fig. 2.

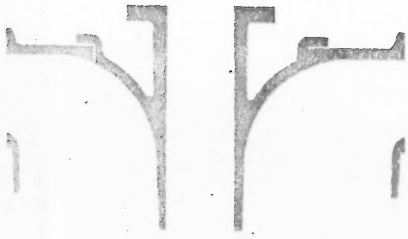


Fig. 3.

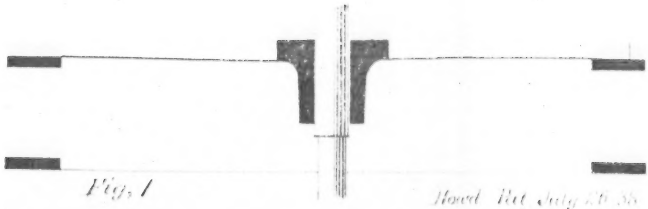


Fig. 1

Howd. Pat. July 30. 38

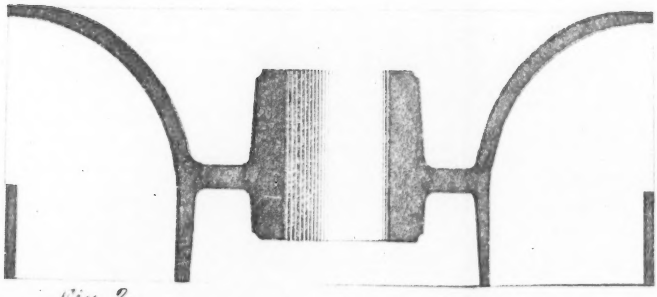


Fig. 2

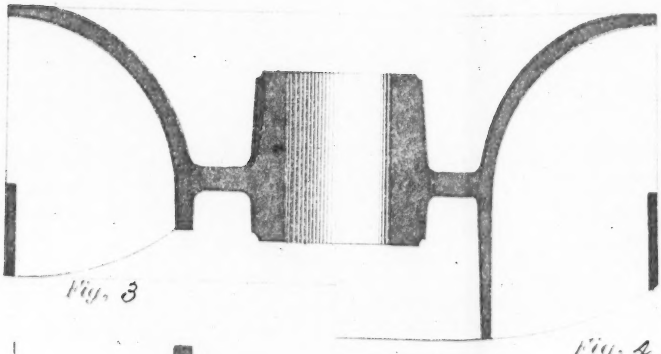


Fig. 3

Fig. 4.

Fig. 6.

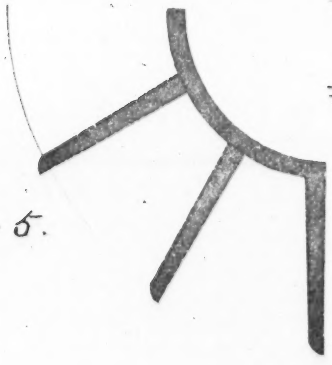


Fig. 5.

Fig. 1.

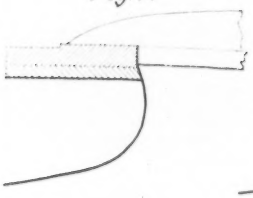
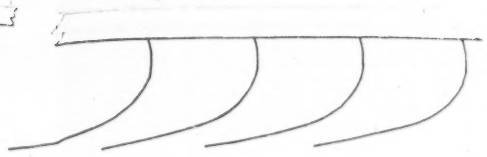
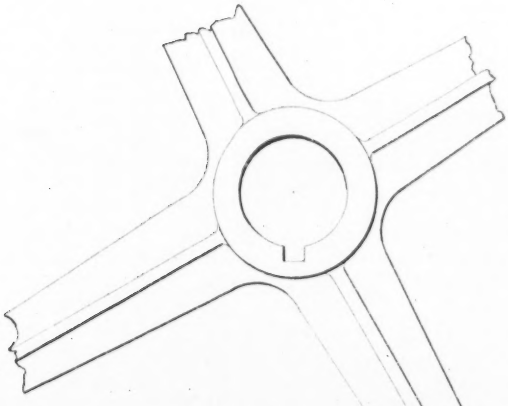
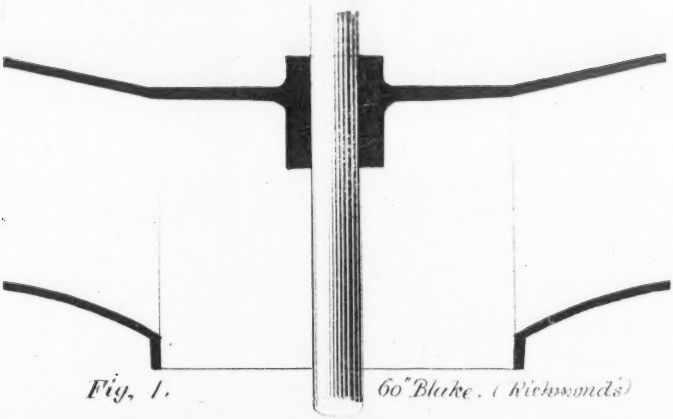


Fig. 2.

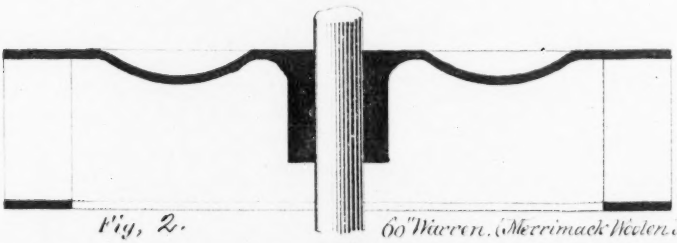




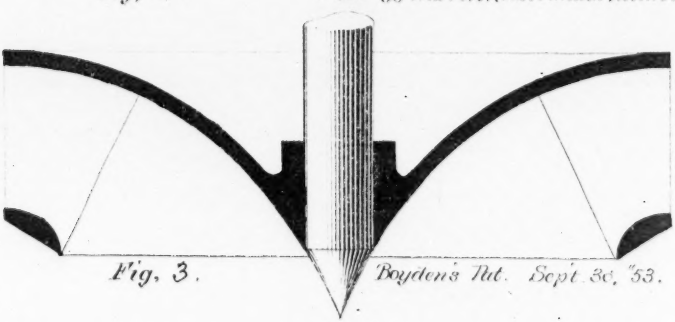
Fig, 3,



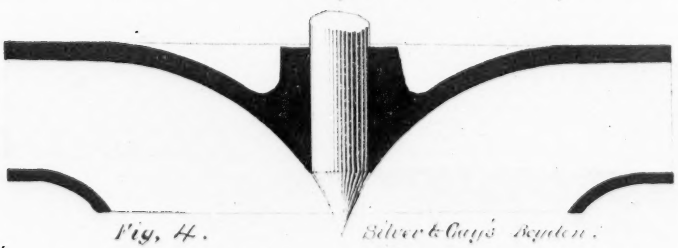
Fig, 1. 60" Blake. (Richmond's)



Fig, 2. 60" Woven. (Merrimack Woolen Mills.

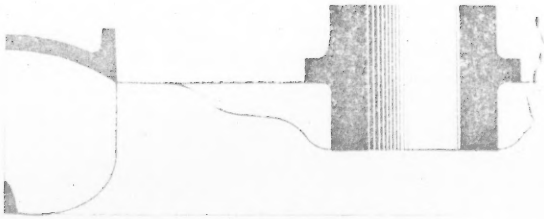


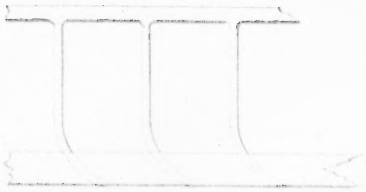
Fig, 3. Boyden's Nut. Sept 30, '53.



Fig, 4. Silver & Gay's Boyden.

49 a





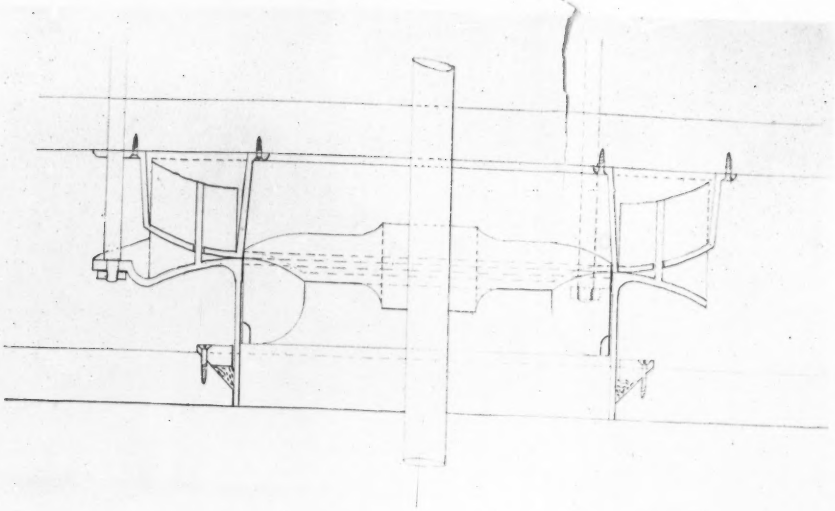


Fig. 1.

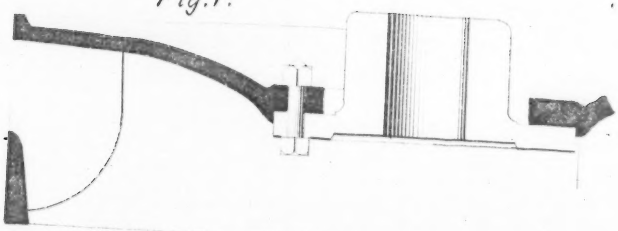


Fig. 2.

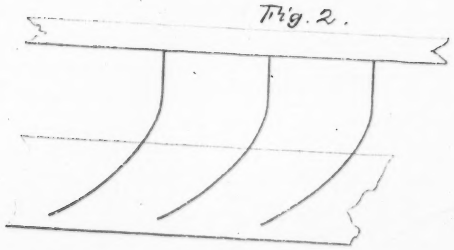
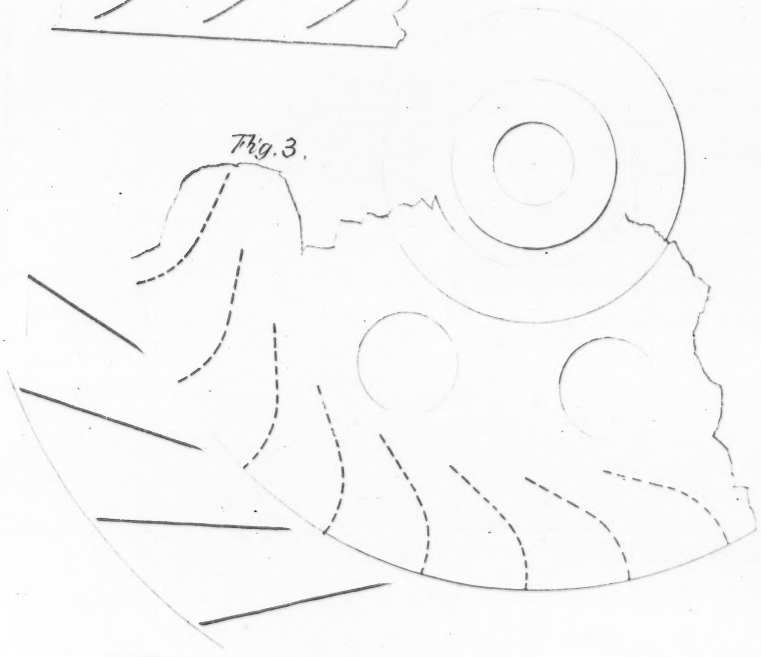


Fig. 3.



52 a

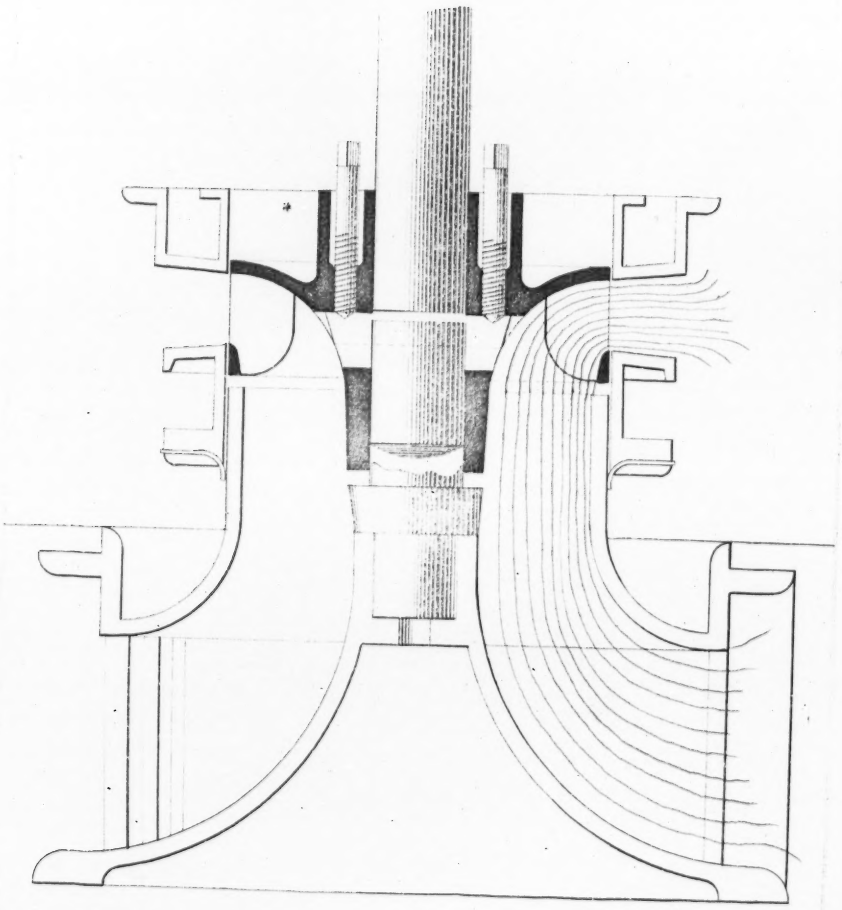


Fig.

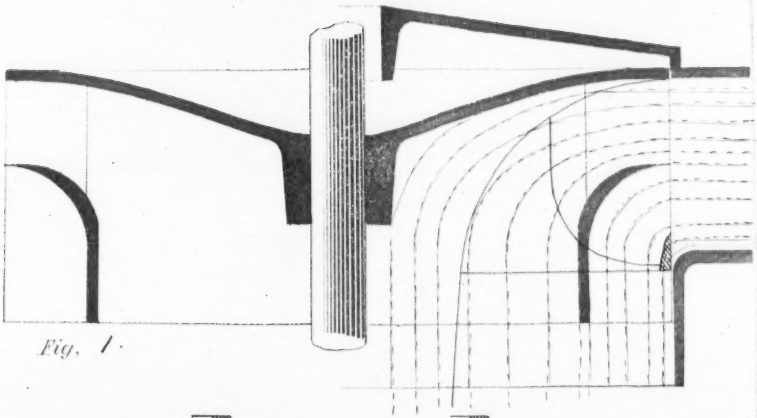


Fig. 1.

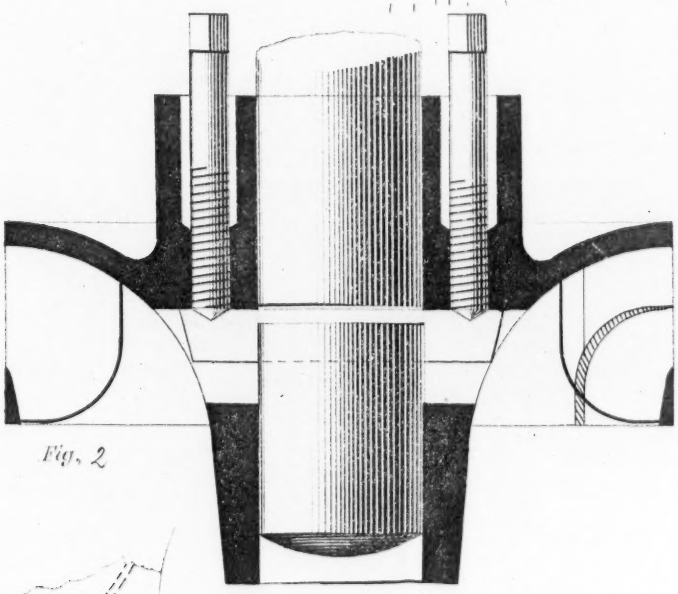
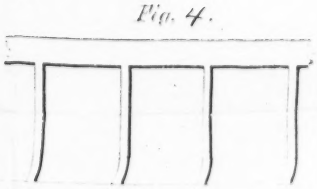


Fig. 2

Fig. 3.

Fig. 4.



5-5 a

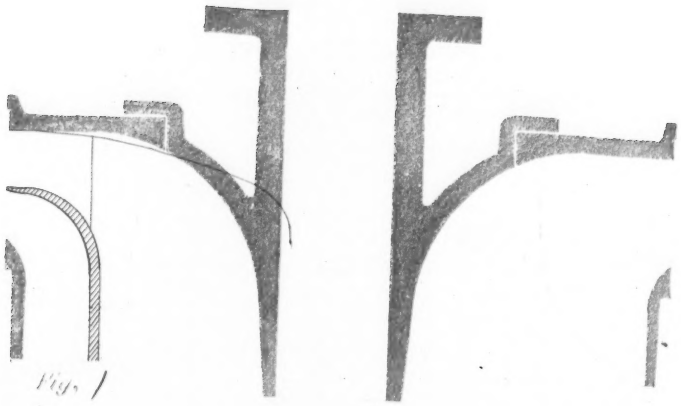


Fig. 1

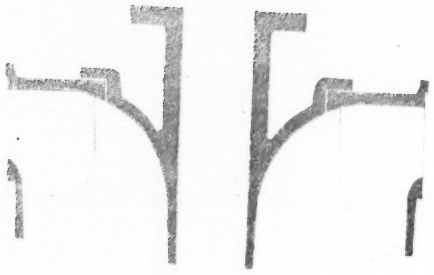


Fig. 2

5-6 a

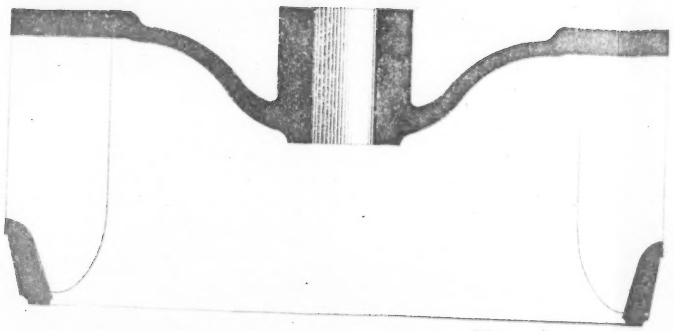


Fig. 1

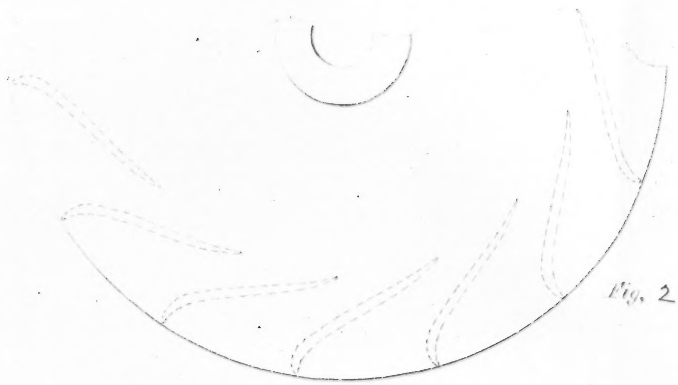


Fig. 2

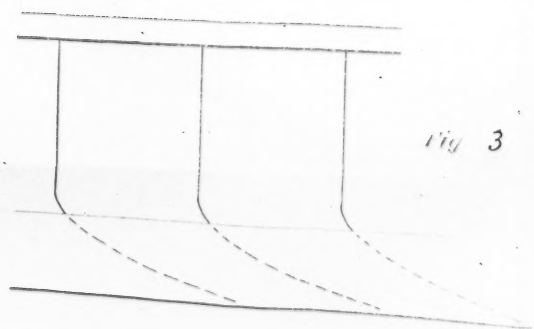
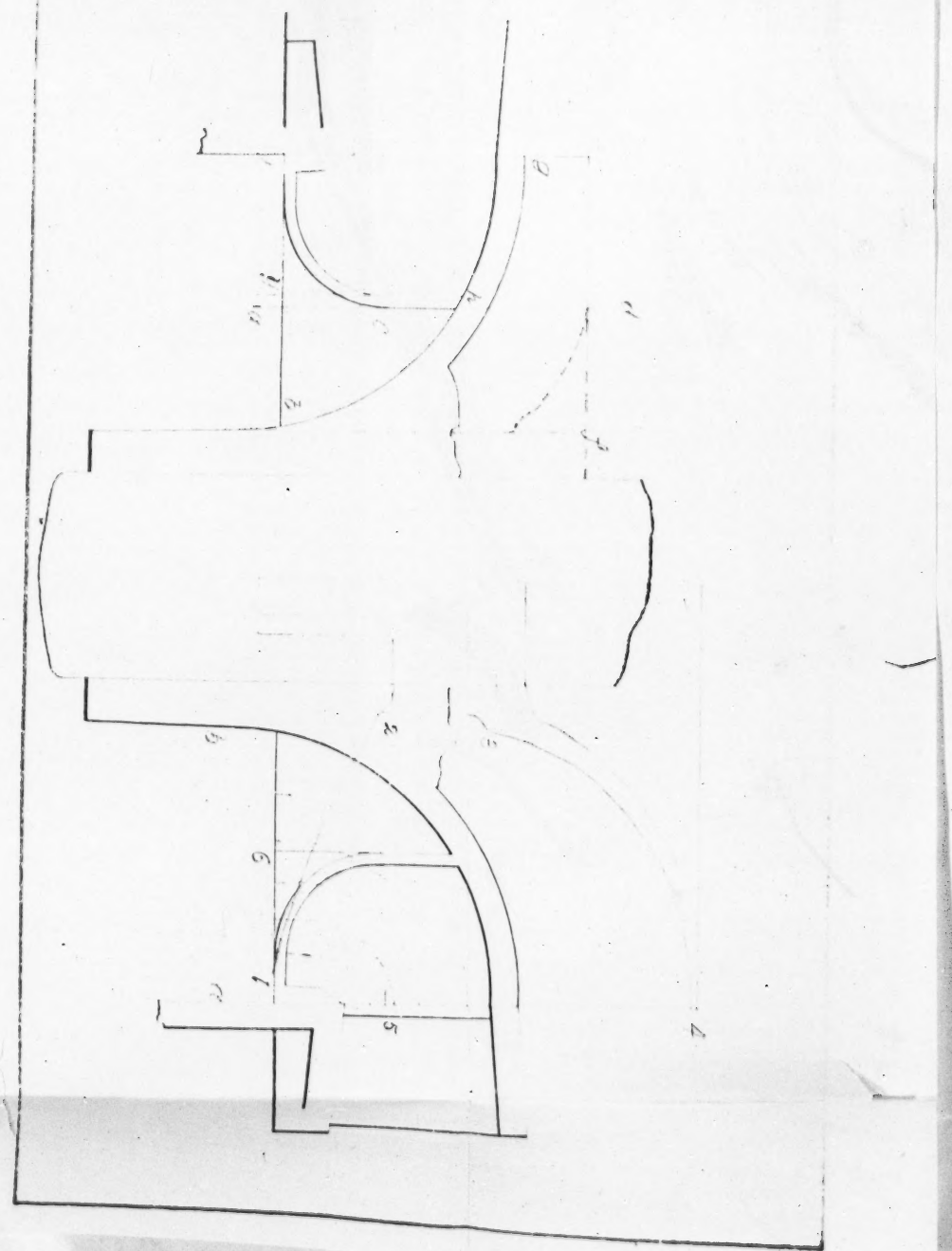


Fig 3

58a



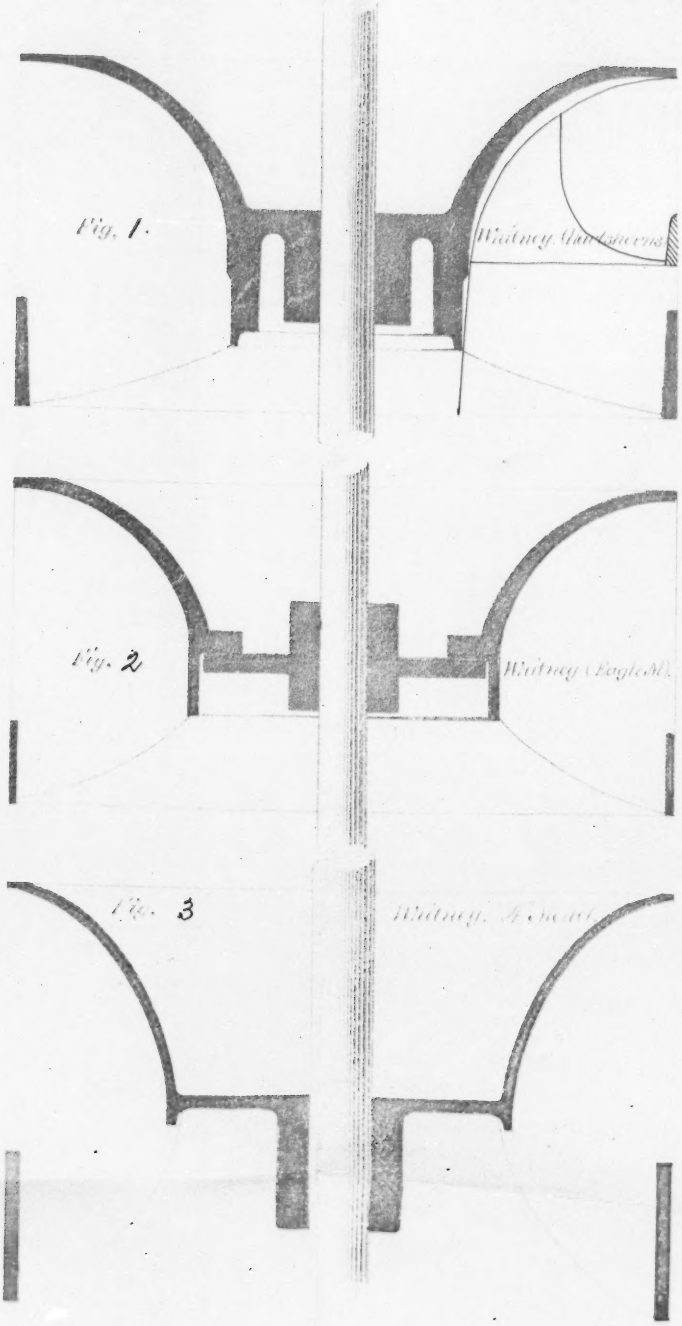
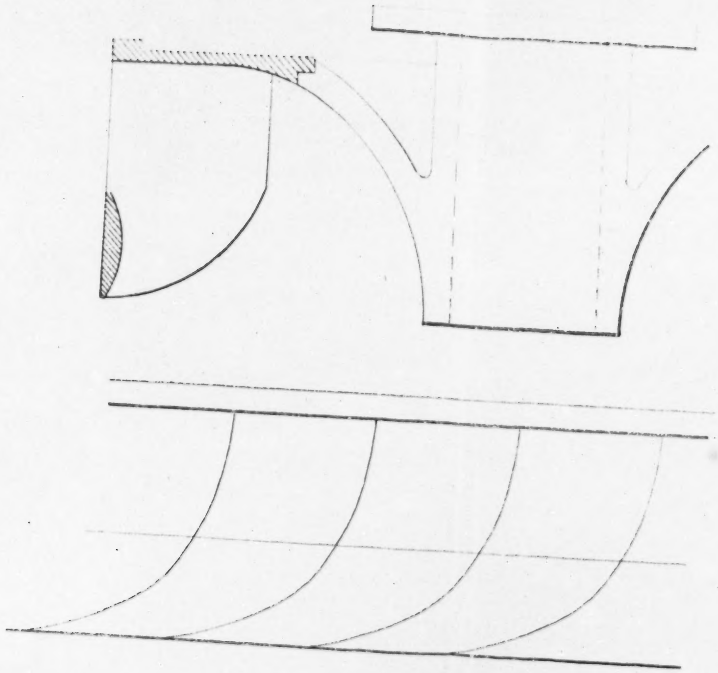
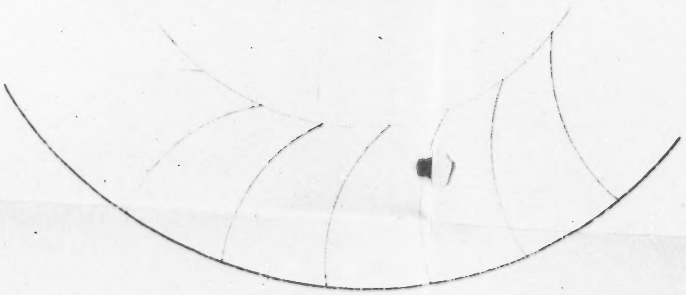


Fig. 1.
Whitney (Hartshorns)
Fig. 2
Whitney (Eagle M.)
Fig. 3
Whitney. A Shovel

62 a





Drawing of Wheel only. From Model.

A. Greenleaf's Water Wheel

No. 10,916. Patented May 16. 1854.

Fig. 1.

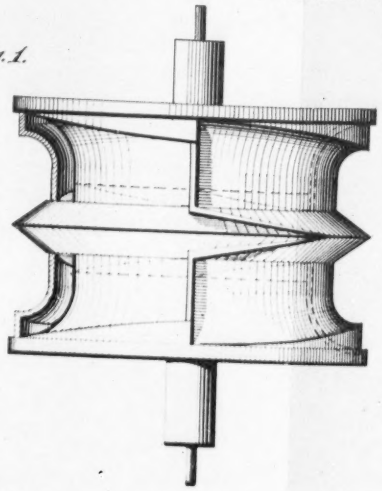


Fig. 2

Attest:

Inventor:

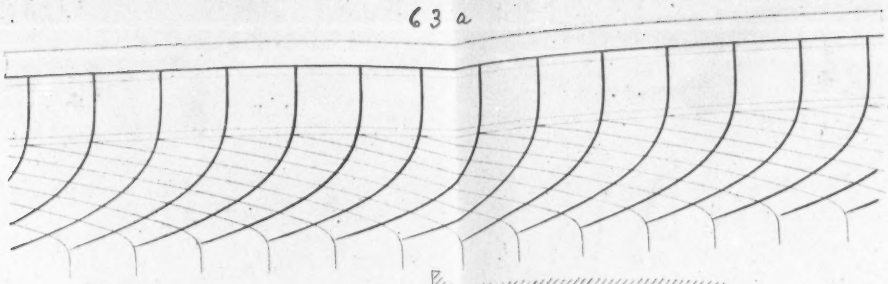


Fig. 1.

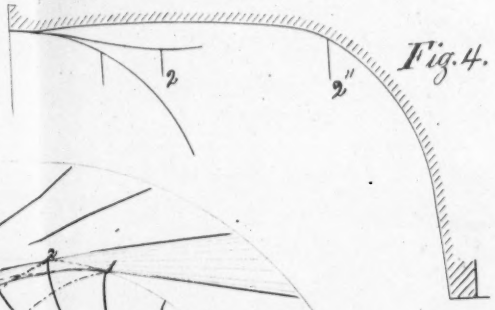


Fig. 4.

Fig. 2.

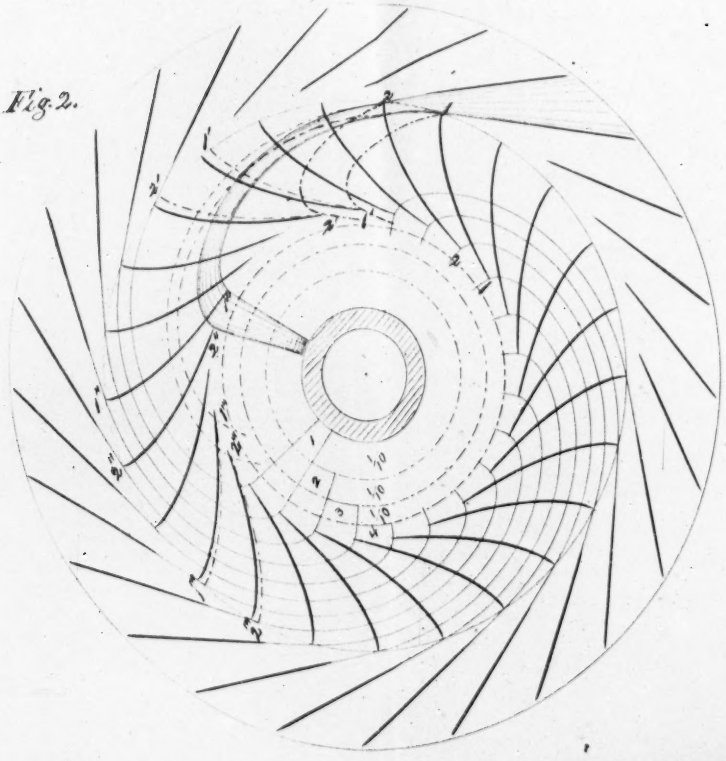


Fig. 3.

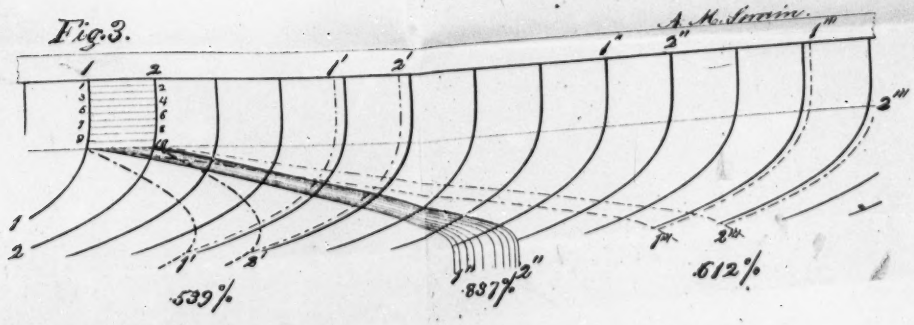


Exhibit No 7

Aug 22 CR Fuld

L. 1576 B. 111 S. S. 455

Abs. of L. 8. 9. 10 & 11 shows :-

1. ~~John~~ Temple. Certif Dec. 1 1834
   1/2 assigned to Arthur Bronson Dec. 1. 1834.
3. ~~John~~ Temple Patent July 2. 1836
4. ~~P. Peter Temple~~ 1/2 Feby 20. 1835. from Bronson by Jno. J Temple atty in fact
7. P. Atty. Arthur Bronson to Frederick Bronson May 5. 1835 all lands in Mass
8. ~~Elijah K. Hubbard~~. 1/2 June 11. 1835 ~~Aff~~?
11. ~~Elijah K. Hubbard. June 11. 1835 Not under seal Account not good for Deer~~
12. Sub. by Hubbard July. 3 1835
14. ~~Peter~~ Cohen June 2 1836 Account not good for val et Jaur.
15 John S. Wright Aug. 22. 1837 wife? No - so Jackson says

18 ~~Sheriff Deed to Benj. W. Raymond~~ Nov 22. 1841.
19. ~~Simeon Keeler Dexter~~ Octo 23. 1843
21. P Atty Dexter ~~Aff~~ to Benj W. Raymond June 29. 1846 Account ?
Another R Atty shown by 2d also

128		
15	50	
16	50	
21		
22		

James Sellers sub. Chase Bros + Co May 1. 1872 in connection with L^s (as to other property) by Rus Chase + Co Apl. 11. 1860 bringing abs as to L 15 & 16 down to May 20 1847

13. ~~Charles B King~~. May 20. 1847. Wife?
14 ~~Charles R Barker Carter~~. May 2 6. 1852
15. ~~Henry Knight~~ Feby 1. 1855
26 Ag^t with Enos Ayres Octs 30. 1856
30. ~~Enos Ayres~~. Nov 3 1856
39 ~~Samuel J Walker~~. July 8. 1863
43 ~~Charles C Wait~~ Octo 7. 1865 Octo 26 1865
44. ~~Geo H Williams~~ Octs 1. 1868
45 ~~T. D. to Obadiah Jackson Octo 1 1868~~ 487. 172 Rel to trifling
46 Mary P. Moody Octs. 5 1868 ~~Lis~~?
47. ~~Sept~~ T. D. to ~~John~~ & Jeweth Octo 1 1868 489 102
48. P. Atty to James B. Runion What does this cover? Was Mrs Moody a widow May 8 1871? yes.
49. ~~Charles L Dyer~~ May 17. 1871
51. ~~James B Runion~~ ~~May 11. 1871. 528. 96~~ Released
~~T. D. to James B Runion according to B 99 fol 115~~
~~Duplicate recorded~~

178. 000
15
890000
178000
26.7 0000

53 Obadiah Jackson. June 1. 1872
56. Judg^t Dyer for costs
~~57 Judg^t Dyer with Sutherland~~
~~58 Judg^t Jackson for costs~~ Henry Sutton Walt say not.
Judg^t in Hutchinson v Jackson + Walker

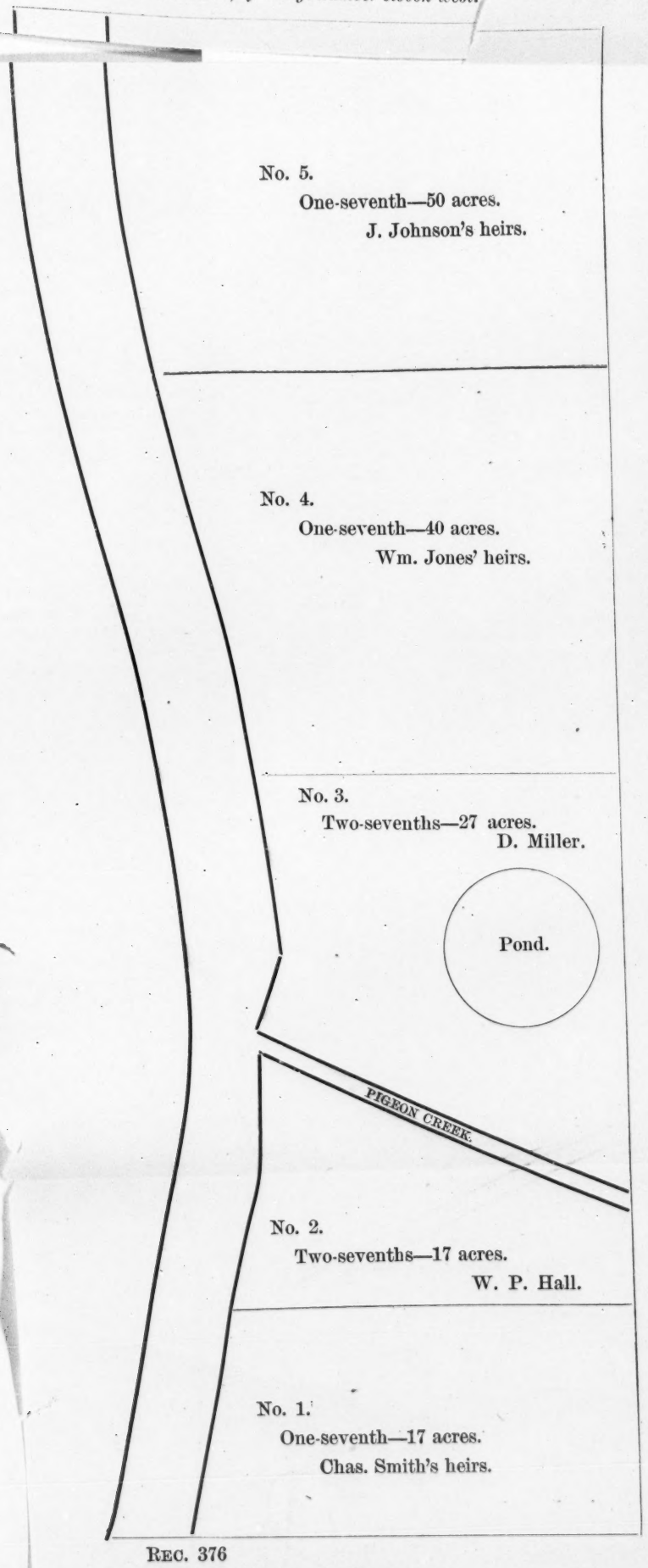
Chase Bros & Co and Jones & Sellers June 29. 1872 from May 20 1847

Stamp T. D. to Jackson
2c. Mrs Moody

120 | 18 0000 (0.1
12
"0000
120 | 0.00

O. Jackson
a smaller
Edson Justice $2.500
Joseph Justice 2.500
June 1. 1872
$7 97c
L 15 & 16 Bin
S.S. Aff^t

Plat of a survey of fractional section twenty-five, in township number six south, of range number eleven west.



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